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Human Rights Committee
116th session

Summary record of the 3244th meeting
Held at the Palais Wilson, Geneva, on Monday, 14 March 2016, at 3 p.m.

Chair: Mr. Salvioli

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Any corrections to the records of the public meetings of the Committee at this session will be consolidated in a single corrigendum, to be issued shortly after the end of the session.

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The meeting was called to order at 3.05 p.m.

Consideration of reports submitted by States parties under article 40 of the Covenant (*continued*)

Sixth periodic report of New Zealand (CCPR/C/NZL/6; CCPR/C/NZL/QPR/6)

1. *At the invitation of the Chair, the delegation of New Zealand took places at the Committee table.*

2. **Ms. Adams** (New Zealand), introducing the sixth periodic report of New Zealand (CCPR/C/NZL/6), said that New Zealand had a strong track record in human rights and that the principle of equality for all under the law formed the bedrock of the justice system. New Zealand was among the highest ranked countries for low corruption and open transparency.

3. Nevertheless, a number of human rights challenges remained to be addressed and New Zealand had a role to play in keeping human rights at the forefront of the international community's actions and helping other countries in that regard. As part of her Government's drive to improve and refine human rights protection in the country, it was considering ratifying the International Convention for the Protection of All Persons from Enforced Disappearance and the Optional Protocols to the Convention on the Rights of the Child and to the Convention on the Rights of Persons with Disabilities.

4. The Government had no plans to review the Bill of Rights Act, although recent developments such as the changes made to the Standing Orders of Parliament had enhanced mechanisms for ensuring compliance with the Act. The Human Rights Commission had launched the second National Plan of Action for Human Rights, in the form of an online tool that was continuously updated.

5. An independent review of the State's intelligence and security agencies had been completed in February 2016: the resulting report referred to the need to protect national security while also protecting individual rights, such as the right to privacy. The Government was committed to further reducing the already small gender pay gap and had established a joint working group to provide practical guidance on the issue. The number of women in senior positions in the public sector now stood at 44 per cent, and the State was on track to achieve its goal of 50 per cent representation by 2021.

6. Thanks to a number of initiatives to improve education and employment outcomes for Maori and Pasifika, the number of Maori students with tertiary education qualifications had increased to 27 per cent, while participation rates in early childhood education were now 94 per cent for Maori and 91 per cent for Pasifika.

7. The police had acknowledged deficiencies in the "Roast Busters" investigation and had accepted the recommended remedial actions to prevent similar situations in the future. The District Commander of the police had made a public apology for the failings in the case. Significant progress had been made in reducing reoffending, and crime rates had fallen considerably in recent years, particularly among young people.

8. New Zealand recognized its abhorrent child abuse statistics and had set targets for reducing assaults on children by 2017. The Children's Action Plan established inter-agency cooperation and legislation to better protect vulnerable children. The State had a zero tolerance policy on underage and forced marriage.

9. The Marine and Coastal Area (Takutai Moana) Act of 2011 removed the foreshore and seabed from Crown ownership and recognized the inherited rights of Maori. The Government had also taken a number of measures that were in line with the recommendations made in the 2011 Waitangi Tribunal report. Local councils were developing new ways to engage Maori communities in decision-making processes.

10. Her Government acknowledged the high rate of family violence in the country, which disproportionately affected Maori and Pasifika families. Preventing and reducing the impact of family violence was a key issue for the Government and was her top priority as Justice Minister. The Ministerial Group on Family Violence and Sexual Violence had spearheaded a cross-government family violence work programme; initiatives included in the refocused version of the programme included the establishment of a national home safety service to support victims and the appointment of a chief victims adviser to the Government. Judges had been given improved access to information in family violence cases, and a new scheme made it easier for the police to disclose a person's violent criminal past to a concerned partner. The Law Commission had issued a report on alternative pretrial and trial processes for sexual violence and another on whether there should be an offence of non-fatal strangulation. A review of family violence laws was currently under way, and the Government planned to introduce a bill into Parliament by the end of 2016. In 2015, the Government had passed the Harmful Digital Communications Act, which simplified the process for removing harmful communications from the Internet quickly and effectively.

11. To address the disproportionately high rates of Maori in the criminal justice system, the Government had developed targeted programmes, which were carried out in collaboration with Maori service providers and communities. "Turning of the Tide" was a visionary strategy developed by Maori communities and the police. Rangatahi Courts were informed by Maori values and helped to reduce reoffending among Maori youth by making justice processes more meaningful for young people and their families. The Ministry of Justice had funded seven local crime prevention initiatives for Maori communities, while the Gang Action Plan followed a collaborative, multi-agency approach to deal with the harms caused by gangs.

12. The Privacy Act sought to strike a balance between privacy protection and other values by restricting the sharing of information about individuals except under specific circumstances. The Government had become aware, however, that the development of a risk-averse culture and the related fear of breaching the right to privacy was inhibiting the sharing of personal information among government agencies, including the police. In an effort to find the right balance between competing rights, there was currently a debate in New Zealand on the intersection between individual freedom and the public's right to be safe.

13. New Zealand had agreed to resettle an additional 750 Syrian refugees and had fully aligned its definition of trafficking with the one set out in the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime. The Organised Crime and Anti-corruption Legislation Bill had made amendments to the offence of trafficking, ensuring that it covered both transnational and domestic trafficking and making it possible for New Zealand to ratify the United Nations Convention against Corruption.

14. The Government had long recognized that, in some instances, the Crown had not honoured the principles of the Treaty of Waitangi. Historical Treaty grievances were settled under the internationally acclaimed Treaty settlement process. To date, 79 deeds of settlement had been signed under that process, and another 56 were expected to be signed. Her Government was proud to engage on a daily basis in the pursuit of equal citizenship and equal opportunity for all New Zealanders.

15. **Ms. Waterval** commended the State party for its admirable efforts towards human rights realization. She said that she wished to know the status of the Human Rights Amendment Bill, and asked the delegation to comment on the concerns raised by the Sub-Committee on Accreditation regarding the procedure for selecting members of the Human Rights Commission and the underfunding of the Commission. She asked what percentage

of the recommendations made by the Human Rights Commission were implemented by the Government.

16. She requested further information about specific measures taken to eliminate gender inequality in matters of employment. Lastly, she wished to know the outcome of the two new processes established by the Government in response to the decision issued by the Court of Appeal in the case of *Terranova Homes and Care Ltd. v. Service and Foodworkers Union Nga Ringa Tota Inc.*

17. **Mr. Iwasawa** expressed appreciation for the State party's willingness to be among the first countries to accept the new reporting procedure. Pointing out that the Committee's concerns were not restricted to those raised in the list of issues prior to reporting, he requested more information about the issues referred to in paragraph 6 of the State party's periodic report.

18. Noting that New Zealand maintained reservations to articles 10 (2) (b), 10 (3), 14 (6), 20, and 22 of the Covenant, he asked the State party to continue to review the need to maintain those reservations and to consider withdrawing any that were not absolutely necessary. Specifically with regard to articles 10 (2) (b) and 10 (3), he asked whether the State party had a plan to address the shortage of juvenile detention facilities in the country. As for article 14 (6), he said that the State party should explain why the guidelines for determining eligibility for ex gratia payments had not been enacted into law, as the guidelines currently could not be invoked as a legal basis for a compensation claim.

19. Noting that section 61 of the Human Rights Act 1993 prohibited advocacy of racial hatred and section 131 prohibited incitement to racial disharmony, he asked whether those provisions could be interpreted as providing protection against hatred not only for racial groups but also for religious groups and, if so, why the reservation to article 20 was necessary.

20. As the Covenant did not have the force of law in the State party, it was essential to ensure its full integration into domestic legislation, in particular through the New Zealand Bill of Rights Act. The right to privacy, which was guaranteed under article 17 of the Covenant, and some of the grounds for discrimination listed in article 26 of the Covenant were not reflected in the Act. Section 6 of the Bill of Rights Act required the courts to give preference to interpretations of laws that were consistent with its provisions. He wondered whether courts could refer to the Covenant and the Committee's Views and general comments in interpreting the Act and other laws. The Attorney-General was required under section 7 of the Act to inform the House of Representatives of any inconsistency of a bill with its provisions, but he or she was not empowered to prevent its enactment. As a result, many laws that were inconsistent with the rights enshrined in the Bill of Rights Act and the Covenant, such as the Criminal Investigations (Bodily Samples) Amendment Act 2009, had been enacted. The Attorney-General's reporting mechanism therefore seemed to be relatively ineffective.

21. The Committee also noted with concern that the Bill of Rights Act did not take precedence over other domestic laws. He asked whether the courts could declare that a law was inconsistent with the Human Rights Act or the Bill of Rights Act and, if so, which category of court could issue a declaration and with what impact. He also wished to know whether ministers were required to make such declarations before Parliament and, if so, what action the Parliament or Government was required to take. It would be interesting to learn how many laws had been amended as a result of such action. Furthermore, he asked whether the State party planned to act on the 2013 recommendation by the Constitutional Advisory Panel that the Government should explore the possibility of entrenching all or part of the Bill of Rights Act and of giving the judiciary powers to assess legislation for consistency with the Act.

22. He requested information on the measures taken by the State party to implement the Committee's Views on communication No. 1368/2005. He welcomed the action taken to reduce delays in Family Court proceedings, including the establishment of a mandatory out-of-court family dispute resolution mechanism. He enquired about the outcome of the post-implementation assessment that had been launched in late 2014.

23. **Mr. Shany**, while welcoming the adoption of a new national action plan for human rights, nevertheless expressed regret at the lack of a national action plan for human rights for the period 2010-2015 because of a perception that the first plan, for the period 2005-2010, had been unduly ambitious or not fully implemented. He enquired about the lessons learned from the first plan, for instance the most effective means of establishing goals to ensure their implementation. The State party should also comment on whether the lack of continuity between action plans was seen by the Government as a shortcoming. Commending the establishment of a website for the new action plan that permitted monitoring of compliance with recommendations by the Universal Periodic Review Working Group and treaty bodies, he asked whether there was a procedure for reconsidering the State party's position regarding the acceptance of recommendations that had been rejected in the past.

24. With regard to designations of groups or entities as terrorist groups based on Security Council resolutions, he asked whether the State party had reviewed the lack of a provision in the Terrorism Suppression Amendment Act 2007 permitting such designations to be challenged. He said that the Government had also admitted, in response to a 2008 report by the Special Rapporteur on the promotion and protection of human rights while countering terrorism, that some provisions of the Act had proved unworkable in practice and should be amended. He asked whether action had been taken in that regard. While the Committee welcomed the fact that no classified security proceedings had been conducted under the Act, it remained concerned about the possibility, under section 38 of the Act, of conducting such proceedings and enquired about the safeguards currently in place.

25. He also requested information regarding passport and identity document cancellation proceedings under the Countering Terrorist Fighters Bill. He wished to know, for instance, whether classified information was relied upon in proceedings, whether special advocates were involved and what the practical implications were for a person whose identity document was cancelled.

26. Turning to the Government Communications Security Bureau and Related Legislation Amendment Bill, he stressed the importance of ensuring that safeguards were in place to protect privacy, that the measures taken were necessary and proportionate, and that provision was made for accountability and transparency. Concerns had been expressed regarding the expedited enactment of the Bill and of the Countering Terrorist Fighters Bill, both of which addressed sensitive and technically complicated issues. He requested confirmation that the Government had not yet formulated its position on the independent review of intelligence and security under the Intelligence and Security Committee Act 1996 conducted by Sir Michael Cullen and Dame Patsy Reddy.

27. The objectives of the Government Communications Security Bureau under the Bill were very general; moreover, the terms of section 15 concerning applications for interception and access authorization, and of section 4 concerning private communications, could be broadly interpreted. He asked how the section 4 test of a reasonable expectation of being intercepted was applied and whether adequate safeguards were in place. He also queried the compatibility with the Covenant of the distinction made in the Bill between New Zealand nationals and residents and non-nationals. He asked whether the State party considered that the requirement under section 8 (D) (1) (a) of the Bill that the Bureau should perform its functions in accordance with human rights standards recognized by New Zealand included international standards, such as those of the Covenant. He also wished to

know whether the oversight mechanisms, namely the Inspector General of Intelligence and Security, the Commissioner of Security Warrants, and the Intelligence and Security Committee, took international human rights into account when conducting oversight of the Government Communications Security Bureau. He was concerned about the splintering of oversight among a number of institutions and the limited role played by courts in that regard. He would appreciate information concerning intelligence sharing by the Bureau with foreign intelligence agencies, including the Five Eyes alliance.

28. Referring to the Committee's question, contained in paragraph 10 of the list of issues prior to reporting (CCPR/C/NZL/QPR/6), he asked the State party to provide more detailed information about the national security interests that the State could invoke in order to conduct surveillance activities under the Telecommunications (Interception Capability and Security) Act.

29. Noting that network operators were required under the Act to maintain "call associated data", or information about callers and receivers, he enquired about the scope of that obligation, for instance the length of time for which data must be retained, the safeguards in place to preserve the privacy rights of individuals, and the circumstances in which such data could be shared with other surveillance agencies. The State party should clarify why it was necessary for network operators to register with the police, and for operators that provided infrastructure-level services to disclose their clients' names, which could then be made available to the Security Intelligence Service and the Government Communications Security Bureau, and whether privacy safeguards were in place. He wished to know what types of legal proceedings involving special advocates were envisioned under the Telecommunications Act.

30. **Mr. Fathalla** said that the State party's reply to the Committee's question regarding measures to combat stereotypes and prejudices against ethnic and religious groups had failed to mention religious groups. He requested the delegation to provide the missing information.

31. According to the State party, government services for unemployed people, such as subsidies and job training, were generally prioritized for New Zealanders. He asked whether unemployed migrants were denied access to such services and more specifically to apprenticeships and training. The State party should provide information on any measures taken to prevent incitement to hatred on the Internet.

32. He requested additional information concerning measures to address inequalities faced by Maori and particularly Pacific Island peoples in the labour market. He also enquired about educational measures to promote equal rights in terms of employment opportunities, and requested detailed information concerning the regional initiatives mentioned in paragraph 110 of the report that focused on groups such as young Maori jobseekers.

33. **Mr. Seetulsingh** said that the Committee would appreciate information and statistics regarding the success of the State party's action to eliminate all forms of violence against women. The report indicated that there had been a marked decline in 2013, compared with 2011 and 2012, in the number of cases of male assault and spousal rape, and that a conviction rate of 67 per cent had been recorded. He requested comparable figures for 2014 and 2015, and disaggregated figures for gender-based violence, family violence and spousal rape. He asked whether disaggregated data were available for Maori women. It would be useful to learn how many family-violence-related deaths had occurred during the period from 2013 to 2015.

34. He wished to know whether any studies of the social motives for domestic violence had been undertaken with a view to tackling the root causes of the problem rather than relying on criminal prosecution as a deterrent. It had been reported that women aged

between 16 and 30 constituted 70 per cent of all victims. He asked whether the new data set on victims mentioned in the State party's report was operational. The report also stated that Maori and Pasifika communities identified their own solutions to domestic violence. He wished to know what cultural issues were involved. The State party should provide information regarding remedies provided to victims, such as shelters for battered women, court protection orders and psychological care for victims of family violence.

35. Referring to the case of the "Roast Busters", he said that the victims should have been provided with psychological care and encouraged to come forward and file complaints with a view to preventing the recurrence of such cases. He asked why a complaint filed with the police in 2011 had not been further investigated. Some suspects had reportedly admitted their responsibility for the heinous crimes and expressed regret; he asked whether they had been provided with psychological care. Lastly, he wished to know whether schools provided advice to young girls and encouraged them to report such crimes.

36. **Sir Nigel Rodley** said that he would welcome further clarification of the State party's decision not to withdraw its reservations to article 10 (2) (b) and 10 (3) of the Covenant despite its previous commitment to amend national regulations on detention during the Committee's consideration of its fifth periodic report.

The meeting was suspended at 4.30 p.m. and resumed at 4.50 p.m.

37. **Ms. Adams** (New Zealand) said that paragraph 6 of the report outlined the process of consultation undertaken by the Government with interested stakeholders and NGOs prior to reporting. Some NGO representatives had highlighted issues during the discussions that were not relevant to the Committee's list of issues and therefore were not included in the final report.

38. The Government remained committed to implementing the provisions of the Covenant and had introduced the Bill of Rights Act with a view to supplementing existing domestic human rights legislation. The courts and the Attorney-General must apply the provisions of the Act strictly, but could not strike down other pieces of legislation that they considered to be inconsistent with its provisions. They must instead refer the matter to Parliament which would take the final decision on whether to amend or repeal the legislation in question.

39. The human rights amendment bill had been put before Parliament in 2011 and had subsequently undergone a long process of public consultation. It was currently awaiting the third and final parliamentary reading and it was hoped that it would be adopted in the near future. The members of the Human Rights Commission, whose functions were due to be revised and strengthened under the bill, were appointed by the Government of the day. Any changes to the composition of the Commission were subject to close public scrutiny and the Government was held accountable for its selection of Commission members. No public dissatisfaction regarding the selection process had been voiced to date.

40. Despite having one of the lowest gender pay gaps in the world, the Government had redoubled its efforts and remained focused on obtaining gender parity. Following the Supreme Court's ruling on the *Terranova Homes and Care Ltd. v. Service and Foodworkers Union Nga Ringa Tota Inc.* case, it had launched a benchmarking process to compare employment conditions and salaries among different professions with the aim of achieving wage equity. However, additional public consultations would be required to achieve further progress. Numerous steps had also been taken to increase the representation of women in senior decision-making roles in the public and private sectors and there had been a significant increase in the number of women studying and working within tertiary education. However, women had not fared as well in other traditionally male-dominated professions, such as information technology and construction, and training programmes had been introduced to encourage women's entry into such professions.

41. The Government shared the Committee's concerns regarding the delays experienced in the Family Court, particularly in respect of communication No. 1368/2005, *E.B. v. New Zealand*, concerning the denial of access to children after prolonged parental access proceedings. It had undertaken reforms to streamline the work of the Court and improve the out-of-court family dispute resolution mechanism. Early results suggested that the reforms had produced the desired result and around 83 per cent of family cases had been settled out of court in recent years.

42. As to the "Roast Busters" case, the police force had conducted a multi-agency investigation into the incidents of sexual abuse and the Independent Police Conduct Authority had reviewed the police handling of the case. The victims had received specialist police support during the judicial process and had been granted access to the national reparations service. The case had revealed the existence of deep-seated beliefs surrounding the issues of violence against women and the concept of consent in the affected communities and had highlighted the need for local awareness-raising campaigns to combat peer pressure and victim shaming in future.

43. The Government had allocated some $NZ 1.4 billion per year towards the prevention and combat of domestic violence, including the establishment of an extensive shelter network for women and children, the strengthening of existing protection and police safety orders and the provision of legal aid and specialist counselling services to victims. Cases of domestic violence were the result of a variety of environmental and societal factors and substantial amounts of resources and time would be required to eradicate such behaviour entirely.

44. Regarding the provisions of the Government Communications Security Bureau and Related Legislation Amendment bill, the Government had decided to review the legislation in response to the Committee's concerns. The Telecommunications Act specified the type of information that service or network operators must supply when subject to a valid warrant or lawful authority, but did not provide national intelligence agencies with any powers to intercept information. The authority to intercept communications was set forth in other separate pieces of legislation. The definition of "national security" contained in the Telecommunications Act included a reference to the country's economic well-being. That reference extended to intellectual property and vital national information. New Zealand, like other countries around the world, faced constant cyber security threats and such legislation was required to manage attacks on national security. Every effort had been taken to ensure that data collected under the Telecommunications Act was proportional to the level of threat faced and was subject to independent oversight and monitoring. The intelligence agencies were also held accountable for their actions before Parliament and must publically report their findings on a regular basis.

45. **Mr. Reaich** (New Zealand) said that the criteria used by the Government in the designation of terrorist entities under the Terrorism Suppression Act were made public on the New Zealand Police website. Decisions on designation were ultimately made by the Prime Minister but could be judicially reviewed by the High Court. With regard to the reservations to the Covenant, New Zealand had a longstanding policy to bring domestic law into full compliance with its treaty obligations, but it would not commit to provisions if it knew that they would not be appropriate or feasible. The reservations were monitored with a view to them being narrowed or withdrawn when appropriate. Concerning the reservation to article 14, the Government was of the opinion that the existing process for compensating miscarriages of justice was satisfactory and that the system was highly transparent. There were guidelines for determining eligibility and the quantum of compensation and there was a degree of discretion for the Cabinet to take into account extraordinary circumstances that would justify an ex gratia payment. Of the 25 claims made since 1998, six had been successful. Regarding the reservation to article 20, propaganda for war or advocacy of

religious hatred was not explicitly prohibited by law, but criminal legislation did proscribe the incitement of hostility or ill will between different groups of people if it could endanger public safety. The Human Rights Act also prohibited the incitement of hostility on the grounds of colour, race or national or ethnic origin. At least 15 other developed countries had a very similar reservation to article 20. As for the reservation to article 22, the 1991 provision that employees could not engage in sympathy strikes had been maintained by successive governments. The jurisprudence of the Committee and the International Labour Organization in that regard was monitored, but there were currently no plans to change or withdraw that or the other reservations.

46. **Ms. Leota** (New Zealand) said that the requirement to separate prisoners under the age of 18 from the adult population was met in male prisons through the use of designated youth units. Male prisoners under the age of 18 might be mixed in with adult prisoners when they appeared in court or were apprehended by the police, but only for a very short period of time and subject to close supervision. Given the very small number of female prisoners under the age of 18 — probably less than five at any one time and potentially spread across the country — it was not feasible to have a separate youth unit in women's prisons, as the women in question would probably be housed on their own. Young female prisoners were thus mixed with adults who would pose little risk to them and were screened for vulnerability and monitored closely. As the level of youth crime was decreasing considerably, demand for young peoples' prison accommodation continued to drop.

47. **Mr. Luey** (New Zealand), referring to the constitutional principle of parliamentary sovereignty, said that, although the courts and Attorney-General provided advice, Parliament was the final arbiter of whether a piece of legislation unjustifiably breached a particular human right. The courts had established in jurisprudence that, under the law, they were able to interpret legislation consistently with the international obligations that the legislation had been designed to implement. The courts could interpret the human rights standards in the Government Communications Security Bureau to include compliance with international human rights obligations. In interpreting relevant legislation, the courts took account of the comments of the Committee and other relevant international bodies. Under the Human Rights Act, the Human Rights Review Tribunal and the courts had the legislative power to make declarations of inconsistency, in other words to declare that a piece of legislation was inconsistent with the right to freedom from discrimination. Three such declarations had been made; two of them had led to a change in law or processes that could lead to a change of policy. Although there were no legislated remedies under the Bill of Rights Act, the courts had established a range of remedies, including the right to public law compensation and a declaration of inconsistency.

48. **Mr. Crooke** (New Zealand) said that sections 61 and 131 of the Human Rights Act did not cover incitement to religious disharmony, but religion was a prohibited ground of discrimination under that Act. Section 131, a criminal provision, was not often invoked because the activities it covered were also covered by other criminal offences. Under the Sentencing Act, if an offence was committed partly or wholly because of hostility towards a group of persons, including on the grounds of race or religion, the court must consider that an aggravating circumstance.

49. **Mr. Stuart** (New Zealand) said that migrants made up approximately one third of the country's workforce and that figure was expected to grow. Migrants to New Zealand were generally well educated and had favourable labour market outcomes. The Government was focused on ensuring that migrant workers received fair and equal treatment in the labour market, that good settlement services were available to migrants and refugees, and that migrants were not exploited. Employers were obliged by law to provide protection against discrimination in employment. The New Zealand Migrant Settlement and Integration Strategy had been approved in 2014, with five outcome areas: employment,

education and training, learning English, inclusion, and health and well-being. The first phase of the Strategy had been completed and a review was now under way to determine whether the services and information provided to migrants were properly targeted. A migrant exploitation strategy had been adopted to support exploited employees, holding exploitative employers to account, and helping migrant workers and their employers understand their rights and obligations. The Immigration Amendment Act provided for prison sentences and heavy fines for employers who exploited temporary and illegal migrant workers and were reckless as to their immigration status. Exploitative employers who held a resident visa would be liable to deportation if the offence was committed within 10 years of gaining residency.

50. A number of strategies were in place to improve educational outcomes and labour market opportunities for Maori and Pasifika people. A workforce engagement programme was being implemented to stimulate jobs in areas with high levels of unemployment among Maori and Pasifika people. Efforts were being made to prepare Maori and Pasifika students for jobs when they left school, for example in Auckland Airport's 30-year construction programme or the city's road and infrastructure projects. Te Puni Kōkiri (the Ministry of Maori Development) had introduced a successful cadetship programme to stimulate the participation of Maori people in the workforce.

51. **Mr. Crooke** (New Zealand) said that the State party did not have any formal mechanism for considering the Committee's Views under the Optional Protocol but they were carefully reviewed by the Crown Law Office or relevant government agencies and appropriate responses were formulated. The independent review conducted following the conclusion of the first National Plan of Action for Human Rights had identified issues to consider when developing the next plan, such as establishing a framework for implementation and monitoring and selecting fewer priorities for action. The review process had resulted in a gap between the end of the first plan and the launch of the second, but had ultimately led to a better product.

52. **Mr. Luey** (New Zealand), referring to the question on the use of special advocates, said that the Government was currently reviewing a report by the Law Commission on the use of classified information in courts, which might give rise to changes in that area. With regard to the recent legislation on foreign terrorist fighters, given that a number of national identity documents could be used in New Zealand — a birth certificate, a driving licence or a passport — the cancellation of a passport did not mean that the person did not have any other way of proving their identity at the domestic level. The measure was aimed at stopping New Zealanders potentially wishing to participate in fighting overseas from travelling to those countries. The cancellation of the passport did not prevent the person from obtaining an emergency document from a New Zealand consulate allowing them to travel back home.

53. Regarding the concerns raised in relation to the Terrorism Suppression Act in the context of Operation Eight, in that case the Government had been examining whether a group of people had done enough to be viewed as preparing to commit a terrorist act. Based on the standards in that Act, the Solicitor-General had decided that there was insufficient evidence to proceed with the prosecution. Given the importance of the issue in terms of criminal law and civil liberties, the Government was erring on the side of caution and would not make any changes until it was sure it had found the right balance. Concerning the prevention of cyberbullying and incitement to racial hatred, the Government recognized that it was not simply a matter of enacting criminal legislation, such as the Harmful Digital Communications Act, and so preventive and awareness-raising efforts were being implemented by the Office of Ethnic Communities and the Ministry of Education.

54. **Mr. Fatialla** said that he would welcome information on the training provided to unemployed migrants.

55. **Ms. Cleveland** requested information on the number and outcome of any cases that had been brought for the offence of exploiting migrant workers. Referring to the Fisheries (Foreign Charter Vessels and Other Matters) Amendment Act, she said that she wondered whether crew members on foreign-owned fishing vessels would be informed about the complaint mechanism and what remedies were available to them.

56. **Mr. Shany** asked whether, under the Telecommunications Act, network operators were required to be able to supply call-associated data such as the location, duration, maker and receiver of the call. He would welcome clarification of the implications of cancelling an individual's "certificate of identity".

57. **Mr. Iwasawa** said that it was not clear why no progress had been made since 2010 in relation to the State party's reservations to article 10, paragraphs 2 (b) and 3. He invited the delegation to comment on a recent Radio New Zealand report that the Family Court reform appeared to have failed.

The meeting rose at 6 p.m.

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International Covenant on Civil and Political Rights

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Human Rights Committee
116th session

Summary record of the 3245th meeting
Held at the Palais Wilson, Geneva, on Tuesday, 15 March 2016, at 10 a.m.

Chair: Mr. Salvioli

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Consideration of reports submitted by States parties under article 40 of the Covenant (*continued*)

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Any corrections to the records of the public meetings of the Committee at this session will be consolidated in a single corrigendum, to be issued shortly after the end of the session.

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The meeting was called to order at 10 a.m.

Consideration of reports submitted by States parties under article 40 of the Covenant (*continued*)

Sixth periodic report of New Zealand (continued) (CCPR/C/NZL/6; CCPR/C/NZL/QPR/6)

1. *At the invitation of the Chair, the delegation of New Zealand took places at the Committee table.*

2. **The Chair** invited the Committee members to resume asking follow-up questions.

3. **Mr. Seetulsingh** said that he had been surprised by the comments made by the head of delegation at the Committee's 3244th meeting regarding the "Roast Busters" case, since she had appeared to suggest that the girls involved, most of whom were underage, might have been responsible for what had happened to them.

4. **Ms. Adams** (New Zealand) said that she had not meant to suggest that the women involved were in any way responsible for what had happened. By alluding to the fact that the women themselves had testified that they were not sure whether or not they had given consent, she had intended to highlight the critical importance of ensuring that young women were better educated about the meaning of consent.

5. **The Chair** said that, while it was important to educate young people about issues relating to consent, it was even more important to eradicate the underlying macho culture that led to rape. Furthermore, where underage girls were concerned, consent could not be an issue.

6. **Ms. Waterval** asked whether members of the Human Rights Commission were appointed by the executive or Parliament and whether the Commission was adequately resourced in human and financial terms.

7. **The Chair** invited the delegation to reply to that question and those that had been raised at the previous meeting.

8. **Ms. Adams** (New Zealand) said that members of the Human Rights Commission were appointed by the executive following broad consultations with Parliament and civil society. The intense public scrutiny to which the process was subjected ensured that appointees met the standards required. The Commission received sufficient funds for it to perform all of its functions effectively.

9. **Mr. Smith** (New Zealand) said that, in order to address concerns about the exploitation of crews on foreign-chartered vessels operating in the exclusive economic zone of New Zealand, new legislation was due to come into effect on 1 May 2016 that would require those vessels to fly the New Zealand flag and to comply fully with domestic legislation, in particular labour and health and safety laws. In addition, government observers would be placed on all such vessels, and crew members would be required to open individual bank accounts in New Zealand for the payment of wages in order to monitor compliance with relevant laws.

10. **Ms. Leota** (New Zealand), replying to a question concerning the reservation to article 10 of the Covenant, said that, while the Government was committed to achieving full compliance with that article, a number of challenges remained. In particular, it was not always possible to ensure the availability of separate detention facilities for minors who were required to attend court. The authorities were therefore planning to make greater use of audiovisual links in court proceedings in order to reduce the need for some young people to be detained in court cells together with adults.

11. **Ms. Adams** (New Zealand) said that the Countering Terrorist Fighters Legislation Bill had been passed under urgency in order to meet the emerging challenges posed by the rise of Islamic State in Iraq and the Levant (ISIL) and to give effect to the State's obligations under Security Council resolution 2178 (2014). A number of additional safeguards had been included in the legislation, in line with recommendations made by parliamentary select committees. The 2013 Government Communications Security Bureau (GCSB) Amendment Bill had been passed under an expedited procedure in response to a court ruling that had questioned the legality of some of the Bureau's core functions and had led to the cessation of all its activities pending clarification of the law. A full review of the law had recently been completed; the Government was committed to undertaking a full select committee process for any legislative changes that might be required as a result.

12. Legislation that provided for the cancellation of passports and other travel documents did not permit the cancellation of core identity documents such as birth certificates. There was no requirement whatsoever under the Telecommunications (Interception Capability and Security) Act for the retention or preservation of data or metadata. The Act did, however, require operators to make and keep a record of the number of their customers, because smaller operators — those with fewer than 4,000 clients — were subject to a lower-level compliance regime than larger ones. Operators were not required to disclose the names or details of their customers.

13. As part of the process to reform family courts, legislative measures had been introduced to remove the ability of lawyers to involve themselves in proceedings where they were not required so as to ensure that persons who could not afford their services were not placed at a disadvantage. In order to circumvent those regulations and reinsert legal representation in cases that did not warrant it, some lawyers had taken the opportunity to apply for "without notice" hearings. However, judges granted such applications only in cases where such a procedure was appropriate.

14. **Mr. Smith** (New Zealand) said that all migrants, with the exception of those who were in New Zealand on temporary visas to fill short-term job shortages, were entitled to take part in government employment schemes. In the previous two years, following the establishment of two specialist units, 32 prosecutions had been brought against employers for exploitation of migrant workers; to date, 24 convictions had been handed down.

15. **Mr. Shany** said that he would like to know the policy reason that lay behind section 23 (a) of the Telecommunications Act, which required network operators that provided infrastructure-level services to ensure that the police-appointed registrar was advised of the names of all existing customers that purchased such services.

16. He asked whether the Government had decided to expand the use of tasers by equipping all front-line police officers with those devices and, if so, what need had prompted that decision. It would also be interesting to know whether the Government had decided to replace the current taser model with a more powerful version and, if so, whether it planned to provide police officers with appropriate training on its use. While welcoming the fact that tasers used by the police were now fitted with cameras, he asked whether the authorities were considering introducing the use of body cameras in police operations, so as to provide a more comprehensive picture of circumstances that might lead to the use of violence or weapons by the police.

17. He asked whether any measures had been taken during the reporting period to address the structural problems identified by the Independent Police Conduct Authority during its inquiry into police actions during Operation Eight regarding, for example, the environmental effects of police operations and the apparent profiling of individuals on the basis of their community membership.

18. **Mr. Iwasawa** asked the delegation to comment on reported disparities in treatment between refugees arriving under the quota programme and other groups of refugees. He said that he would like to know whether there were plans to extend the mandate of the Human Rights Commission to allow it to receive complaints of human rights violations related to immigration laws and practices. He asked the delegation to respond to concerns that had been expressed about the protection of privacy following the disclosure of personal information by the Refugee Status Branch to third parties. Did the State party have any plans to introduce legal safeguards or a set of confidentiality guidelines in that regard? In view of reports concerning restrictions on the movement of refugees detained in open immigration facilities, he asked the delegation to explain the precise nature of those facilities. Did the Government intend to retain the option of using offshore detention centres for migrants? He requested the delegation to explain in greater detail the asylum application procedure for refugees who were considered to be part of a mass arrival and to respond to claims that it was inconsistent with article 9 of the Covenant.

19. He would welcome information on the impact of the targeted joint-agency operations referred to in paragraph 181 of the periodic report (CCPR/C/NZL/6). In the light of information furnished by the delegation concerning the case of T.A.T. referred to in paragraph 17 of the list of issues (CCPR/C/NZL/QPR/6), he would like to know what criteria the authorities used to distinguish between cases of human trafficking and other cases of illegal immigration and whether immigration officers and the police were provided with guidelines or training to enable them to detect trafficking cases.

20. **Mr. Seetulsingh** said that the State party should clarify the situation regarding the proposed amendment of the Misuse of Drugs Act 1975 and the impact of such amendment on the presumption of innocence in cases involving the possession of drugs. If the resulting legislation lacked adequate safeguards, it was contrary to section 25 of the New Zealand Bill of Rights and article 14 (2) of the Covenant.

21. He wished to know whether solitary confinement was permitted in private prisons and whether the Government would implement the United Nations Standard Minimum Rules for the Treatment of Prisoners (the Mandela Rules), under which solitary confinement was limited to 15 days. Noting that different institutions made up the preventive mechanism required to be in place when a State acceded to the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, he wished to know which institution visited prisons. He asked whether the Subcommittee on Prevention of Torture, which according to the periodic report had visited the Mount Eden Corrections Facility in 2013, had issued a report following its visit.

22. He would welcome information on whether the Waitangi Tribunal was provided with adequate resources. The State party claimed, in its periodic report, that there was no big backlog of cases, yet 1,865 claims remained outstanding, even after the number had been reduced because some claims had not met the required criteria. He would like to know what those criteria were and whether it was the case that claimants were not heard before their claims were dismissed; the rejection of such claims might cause dissatisfaction in the Maori community. The delegation should inform the Committee of the timetable for implementing the decisions of the Tribunal.

23. The Maori made up only 15 per cent of the population but 50 per cent of the prison population and he wondered whether the situation was linked to the social or the justice system. He commended the Turning of the Tide: A Whānau Ora Crime and Crash Prevention Strategy, but the State party should consider whether, if Maori could not be integrated or their traditions respected, society or the education system was at fault. The lack of qualifications of Maori meant that they had menial jobs; he wondered whether there were vocational institutions where they could learn skills and avoid a life of crime.

24. He would be interested to have a fuller account of the crime prevention initiatives listed in paragraph 213 of the State party's report. While the initiatives were commendable, it seemed that remedial action was taken only after the harm was done. The work of the Rangatahi and Pacific Youth Courts, which involved Maori elders, was also laudable, provided that it included follow-up programmes. He wondered whether courts for Maori were outside the official judicial system and whether there were Maori judges within the official system. He also wished to know what proportion of police officers were Maori and how likely they were to gain promotion to inspector level or higher. He asked why Maori were more likely to be apprehended and to be the most severely punished and why so many Maori women were sent to prison.

25. **Ms. Waterval** said that, despite some progress, the level of family violence in New Zealand was unacceptably high: child abuse rates were among the highest of all the States members of the Organization for Economic Cooperation and Development (OECD). In 2014, there had been 3,178 cases of physical abuse of children, 1,294 of sexual abuse and 9,499 of emotional abuse and neglect. The fact that that constituted a decrease of 12 per cent from 2013 was, however, encouraging. She would be glad to learn the corresponding figures for 2015.

26. She wished to know whether the recommendations of the Bullying Prevention Advisory Group set up in 2013 were binding on schools, whether there was legislation on violence and bullying, whether any research into the causes of bullying had been carried out and what statistical data existed.

27. Children aged 15 to 18 years were allowed in law and in practice to engage in hazardous work and she asked what measures the State party would take to protect them. She also suggested that the Government should review the Adoption Act, which might fall foul of the prohibition of discrimination, and bring it into line with the Covenant. Lastly, she asked whether the State party had measured the impact of awareness-raising campaigns on the incidence of forced and underage marriage.

28. **Mr. Fathalla** said that the State party should provide information about the training provided for refugees before they found employment.

29. Noting the State party's statement that the Marine and Coastal Area Act 2011 had removed the foreshore and seabed from Crown ownership and recognized Maori rights, he said that the Committee had in fact learned that Maori did not have exclusive rights to the foreshore and the seabed. He would welcome clarification.

30. Referring to the State party's report, according to which inclusion of references to the Treaty in new legislation was considered on a case-by-case basis, and also that specific policy and timing decisions were yet to be made, he said it was not clear how the measures mentioned in paragraph 200 formed part of domestic law. The State party should provide an explanation in that regard.

31. He would be interested to learn by how much the representation of Maori in local elections had increased and whether local councils were developing measures to engage Maori in decision-making; examples of action that had been taken would be welcome. He asked who was responsible for implementing the recommendations of the Royal Commission on Auckland Governance and how the State party was developing the technical capacity of Maori to ensure the effective use of their traditional decision-making procedures.

The meeting was suspended at 11.05 a.m. and resumed at 11.30 a.m.

32. **Ms. Adams** (New Zealand) said that training was indeed given to unemployed migrants. With regard to the question of the disclosure of customer information under article 23 (a) of the Telecommunications (Interception Capability and Security) Act, she

said that the rules applied only to infrastructure providers that provided layer 1 unlit services, not to the end users. Such providers were required to pass on the names of wholesale telecommunication companies that used layer 1 services. They could provide wholesalers with a lit fibre service, which was layer 2, or they could provide layer 1 services, while other providers could provide layer 2 services. There was a clear policy rationale for such regulations.

33. **Ms. Leota** (New Zealand), responding to a question about tasers, said that the police did not routinely carry firearms. Tasers were therefore one of the technical options available to them in dealing with offences such as assault. The police had no intention of relinquishing their use of tasers, but such use was closely monitored. Taser users received initial training and annual recertification training. The policy on the use of tasers by police reflected the provisions on the statutory use of force contained in the Crimes Act 1961. All taser use was subject to review by the Taser Assurance Forum, which was made up of police operations groups, a district representative and a representative of the New Zealand Police Association. A report was made by officials at inspector level or above on every use of technical options. There was a camera on the taser, showing what had occurred before its deployment, and the presentation of footage of incidents was mandatory.

34. In 2014, there had been 7,163 uses of technical options at 4,823 events. Tasers had been used 1,014 times, or 21 per cent of the times that technical options had been used. Technical options were rarely used in interactions with the public. Tasers had been displayed 95 times, in presentation, laser painting or arcing mode, but discharged only 119 times, or 12 per cent of all deployment. Only 1.4 per cent of persons hit by a taser suffered injury, as against 2.3 per cent of those struck by oleoresin capsicum (OC) spray, 5.7 per cent of those secured in handcuffs, 23.4 per cent of those struck with batons and 86.3 per cent of those disciplined using a police dog. The police were exploring the possibility of adopting on-body cameras, the use of which had already undergone trials in a number of prisons.

35. With regard to Operation Eight, the police had made a public apology to the people of Tuhoe. The Independent Police Conduct Authority had found that, although the planning and preparation of the Operation had been in accordance with policy, the roadblocks in Ruatoki and Taneatua had been deficient. The Authority had recommended that police should not wear balaclavas except in conjunction with ballistic helmets where such action might affect community trust and confidence and that an impact assessment should be made before any police operation.

36. **Mr. Stuart** (New Zealand) said that, under the Immigration Act, individual immigrants could not complain to the Human Rights Commission about the content or application of immigration law. That ensured that the review and appeal process was not subject to delays. In that connection, he said that most cases could be brought before the Immigration and Protection Tribunal, which was an independent body. However, the Act explicitly preserved all other functions of the Human Rights Commission in relation to immigration matters. The Commission could also respond to complaints about issues that were not related to the substance of immigration law and policy, such as complaints of alleged racist abuse in the provision of immigration services.

37. Under the Immigration Act, information must be kept confidential but could be disclosed under limited circumstances and with appropriate safeguards. The Act did not require the person concerned to be notified; however, information was disclosed in very few cases. A recent survey of 287 decisions had resulted in one inquiry in which information had been disclosed to the home country, with the consent of the person concerned. In a further eight cases information had been disclosed to safe third countries; in five of those cases, the person concerned had given his consent.

38. Three different types of procedures existed for processing asylum claims. Firstly, under a refugee quota programme, persons who had been accepted as genuine refugees were placed in the Mangere Refugee Resettlement Centre and underwent an induction programme. Secondly, when undocumented migrants claimed asylum, a decision had to be made as to whether they would be returned to their country of origin. The persons concerned could be held in custody for 28 days. Most such asylum seekers were also eventually sent to the Resettlement Centre. The third type of procedure was in place to deal with mass arrivals, mostly by boat. The Government sought to impose the least restrictive conditions on the new arrivals. However, a district court judge could order detention for up to six months. A new open detention centre was currently being completed at Mangere; it would be able to accommodate much larger numbers of people than the existing premises.

39. The Mangere Refugee Resettlement Centre was an open detention centre that asylum seekers could enter and leave freely; however, they were required to report when they left or returned to the Centre. Some persons were placed there by court order, which could impose certain conditions on their movement. New Zealand did not have any offshore processing arrangements.

40. The Plan of Action to Prevent People Trafficking had been in place for two years and would be reviewed in the near future. Under the plan, which had proved to be a success, the Government, in cooperation with police and various agencies, introduced preventive, educational and other measures for victims of trafficking. The Organised Crime and Anti-corruption Legislation Bill had recently been amended to remove transnational elements of human trafficking and include provisions on trafficking for purposes of exploitation. The first few cases were currently being considered by the courts. The Government had also increased its focus on victims of trafficking, ensuring that they received support services and visas to enable them to remain in New Zealand.

41. **Mr. Luey** (New Zealand) said that, under the Misuse of Drugs Act, individuals found to possess a certain amount of drugs were presumed to be drug suppliers. The Supreme Court had found that the Act imposed a burden on defendants to prove that they were not in possession of that quantity of drugs for the purpose of supply, which was considered to be inconsistent with the principle of presumption of innocence. The Law Commission had recommended that the possession of a certain amount of drugs should be considered as an aggravated offence, so that individuals found with a certain amount of drugs would automatically be exposed to higher penalties. The Government had taken note of the recommendation but had chosen to focus on amendments related to the issue of artificial psychoactive substances. At present, there was no intention to adopt the amendment recommended by the Law Commission. However, the Ministry of Health would examine it as part of a wider review of the national drug policy.

42. **Ms. Leota** (New Zealand) said that, under the Corrections Act 2004, contracted managed prisons must comply with the same domestic laws, international standards and regulations as publicly managed prisons. Privately managed prisons could use solitary confinement. A prisoner could initially be placed in solitary confinement for up to 14 days. The Department of Corrections and private providers understood the importance of prisoners being in contact with each other; however, in some cases, the use of solitary confinement was necessary, especially if prisoners posed a threat to themselves or others. The measure was reviewed at monthly intervals and visiting judges could participate in that process to ensure that legislation was being properly applied.

43. **Mr. Luey** (New Zealand) said that, given the large number of parties involved, including claimants, Crown counsel and historical researchers, the Waitangi Tribunal could only deal with cases at a certain pace. Providing additional resources to the Waitangi Tribunal would therefore not necessarily result in faster or more robust Tribunal reports. As at December 2015, the Tribunal had grouped all historical claims into 37 districts and had

reported on 19 of them, covering around 79 per cent of New Zealand. A further 10 districts were under inquiry and iwi from the remaining 8 districts had either settled their claims or were preparing for settlement negotiations with the Crown.

44. The Tribunal had launched additional initiatives to improve the efficiency of its administration. The Tribunal continued to respond effectively to urgent applications in which claimants alleged that they were suffering or likely to suffer significant and irreversible prejudice as a result of current or pending Crown actions or policies. Referring to paragraph 204 of the State party's report, he said that, in order to register a claim, the Tribunal had to determine whether the claimant was in a position to represent the iwi or Maori families affected by that claim. At present, there were 200 outstanding unregistered claims.

45. **Mr. Crooke** (New Zealand) said that the Marine and Coastal Area (Takutai Moana) Act had established a common marine and coastal area which could not belong to anyone. The area had thereby been removed from Crown ownership and the inherited, albeit non-exclusive, Maori rights in that area had been recognized. The Act also acknowledged the cultural and spiritual relationship of Maori to that area by recognizing Wahi Tapu areas and protecting specified areas from public access.

46. Referring to paragraph 200 of the periodical report, he pointed out that the Treaty of Waitangi was a relatively short document and much of the disagreement surrounding the Treaty had arisen from differences between the English and Maori texts. As a result of those differences, it was common to refer to the intention, the spirit or the principles of the Treaty, rather than to the Treaty itself. Several laws had been passed to give effect to settlements made between the Crown and Maori, which recognized the principles of the Treaty. Those laws outlined the ways in which historical actions of the Crown were inconsistent with the principles of the Treaty and the opportunities for redress provided by the settlement. All government legislation was expected to comply with the principles of the Treaty. Any requests to the Cabinet seeking agreement to introduce a bill must certify that the bill was consistent with those principles. The courts had held that the Treaty was part of the context in which legislation was interpreted; as such, it could have an effect on the interpretation of an Act regardless of whether the latter contained a direct reference thereto.

47. The Waitangi Tribunal's report on the Wai 262 claim had implications across many different areas of the relationship between the Crown and Maori, from health and education to indigenous flora and fauna and the Maori language. It also considered the involvement of Maori in the development of the country's position on international instruments affecting indigenous issues. The Crown had established a secretariat to consider the report of the Waitangi Tribunal. A range of measures had been taken to support the relationship between the Crown and Maori. For example, the Patents Act 2013 provided for a Maori advisory committee and gave the Commissioner of Patents the power to refuse to grant patents which could lead to problems within the context of the Wai 262 claim. Several other initiatives had been taken in relation to the Maori language, including the Developing a New Maori Language Strategy in 2014.

48. As for the representation of Maori in local elections, he said that the proportion of elected members who were Maori had increased from 3.6 in 2007 to 5.7 per cent in 2010. The proportion of elected members who identified themselves as both European and Maori had increased from 1.2 in 2007 to 1.7 per cent in 2010. A number of measures were being taken to facilitate Maori involvement in local Government. The Local Government Act 2002 required councils to facilitate Maori participation in local government decision-making. Councils had representatives from local iwi appointed to standing committees and had formal consultation arrangements with iwi and Maori communities. Maori planning and advisory committees updated councils, inter alia, on projects directly affecting Maori

organizations and on service provision. The Local Government (Auckland Council) Act 2009 had established an independent Maori statutory board to promote issues of significance to Maori in Auckland.

49. **Ms. Adams** (New Zealand) said that the high incarceration rates of Maori were linked to failures in both the social and justice systems. There were too many Maori entering the justice system and further problems with the way in which Maori were dealt with thereafter. The Government had focused its related initiatives on health, education, welfare, family support, community support and housing.

50. Particular efforts had been made to help Maori and Pasifika families through the education system. Since 2008, the number of Maori students who had achieved level two of the National Certificate of Educational Achievement had increased by 33 per cent, for a total of about 70 per cent of Maori students. Among Pasifika families the number of students achieving level two of the National Certificate had increased by 48 per cent, for a total of 75 per cent of students.

51. Within the criminal justice system, there was a strong focus on ensuring that organizations addressed subconscious biases. Police promoted community-based initiatives. For example, iwi justice panels enabled police to divert less serious offenders to Maori and community elders who worked with the offenders, often helping them to avoid prison sentences and prevent recidivism.

52. **Ms. Leota** (New Zealand) said that the same prevention and protection mechanisms were in place in private prisons as in State-run facilities. Under the "Turning of the Tide" initiative, which had been launched in response to concerns about the disproportionately high rates of Maori in the criminal justice system, the police and members of the Maori community had pledged to work together to achieve a number of common goals by 2018, including a 10 per cent reduction in the proportion of first-time youth and adult offenders who were Maori.

53. Police officers received training to enhance their cultural understanding and thereby minimize the potential for unconscious bias in decision-making. The police had also formed partnerships with the Maori community to design and implement crime prevention programmes, to facilitate access to justice and to guarantee equal treatment before the law.

54. A significant number of prisoners lacked basic skills and had a history of unemployment and addiction. The Department of Corrections was working to address the causes of offending and to rehabilitate inmates, in part by offering a range of industry-based training programmes. Commonly used alternatives to incarceration included community service. Offenders serving community-based sentences were entitled to spend 20 per cent of their time acquiring practical living and working skills.

55. The Te Tirohanga promoted the social reintegration of Maori inmates by strengthening their connection to their iwi; its introduction in five male prisons had led to a 6 per cent fall in recidivism rates. While the Government had adopted many corrective and restorative measures to ensure public safety and to improve outcomes for victims, offenders and their families, it was equally committed to crime prevention through early intervention.

56. Maori women accounted for just under two thirds of all women prisoners, who in turn constituted between 5 and 6 per cent of the total prison population. All Maori inmates had access to rehabilitation programmes underpinned by Maori principles.

57. **Ms. Adams** (New Zealand) said that efforts to eliminate cases of domestic and gang violence, in which Maori people were substantially overrepresented, had helped to reduce the Maori prison population.

58. The Government was determined to improve the country's child abuse record. Given that Maori children were five times more likely to be victims, steps would be taken to engage with Maori communities in order to address patterns of abuse. One of the Government's 10 Better Public Service targets to be achieved by 2017 was to reduce the number of assaults on children by 25 per cent. Legislation was currently being drafted to provide for the registration of child sex offenders and follow-up was being given to the recommendations of an expert advisory panel that had been set up to assess the effectiveness of the Child, Youth and Family service in meeting the care needs of children who had been removed from their family environment.

59. Pursuant to the Vulnerable Children Act of 2014, government agencies were required to work collaboratively across portfolios to support vulnerable children. To combat bullying, which was a global issue, the Government had developed Positive Behaviour for Learning initiatives and an advisory board, whose members included education professionals, had been created to evaluate the initiatives and to make non-binding recommendations to schools.

60. The Harmful Digital Communications Act had been passed to mitigate the harm caused by bullies online. The Act provided for preventive measures in schools and among community groups, and for the removal of abusive or threatening online material. An approved non-governmental organization was set to be given a mandate to ensure that a balance was struck between respecting the right to freedom of speech and protecting Internet users from harmful content.

61. It was too early to gauge the impact of the initiatives outlined in paragraph 232 of the periodic report (CCPR/C/NZL/6). Monitoring was ongoing, however, and evaluations would be conducted in due course.

62. As New Zealand moved towards a post-settlement environment, the capacity of Maori organizations had grown and Maori people had become more involved in issues such as the management of freshwater resources. The Government was endeavouring to establish a statutory process for incorporating the views of the Maori community in decision-making at the local and national levels, and was funding the provision of technical and advisory support to foster the participation of Maori people in that regard.

63. **Mr. Iwasawa** sought clarification on the distinction drawn, if any, between safe countries and other countries when verifying information provided by asylum seekers. Noting that the Refugee Status Branch was drawing up guidelines for dealing with children during asylum procedures, he invited the delegation to respond to concerns that interviewing children in the absence of their parents could have negative consequences and that asylum officers had not been appropriately trained in that respect.

64. **Mr. Shany** asked whether police discrimination against persons of African descent was a matter of concern for the Government, particularly in the light of a report published by the Auckland University of Technology in which serious related allegations had been made, and invited the delegation to comment on the public reaction to the police's subsequent denial of the claims and criticism of the findings used to substantiate them.

65. **Mr. Stuart** (New Zealand) said that the asylum authorities were very conscious of the importance of identifying safe third countries. In the past, enquiries had been made with the authorities in an asylum seeker's country of origin only with the applicant's consent. Guidelines for dealing with children during asylum procedures were being developed to ensure that children could exercise their right to be heard and that priority was given to their best interests in all decisions affecting them. A second draft of the guidelines, which were expected to be finalized in the near future, had recently been circulated among civil society organizations.

66. **Ms. Adams** (New Zealand) said that the decision of the Human Rights Review Tribunal regarding certain provisions of the Adoption Act had been adopted only eight days previously, on 7 March 2016. It was therefore too early to say how the Government would respond.

67. The allegations of police discrimination against persons of African descent had been made on the basis of anonymous online surveys and were thus of dubious merit. The New Zealand Police took steps to ensure that its composition was representative of the population as a whole. Persons who believed themselves to be victims of discrimination were encouraged to file a formal complaint through the relevant national and international mechanisms. The possibility of unconscious bias in the criminal justice system was taken seriously and efforts were being made to address any possible issues.

68. To conclude, New Zealand had historically led the way with regard to a number of human rights issues. The Government guarded that record jealously, but was aware that there were always areas for improvement. It considered the reporting process to be highly valuable and welcomed the opportunity to gain an international perspective on domestic challenges.

The meeting rose at 12.50 p.m.

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Summary record of the 3246th meeting
Held at the Palais Wilson, Geneva, on Tuesday, 15 March 2016, at 3 p.m.

Chair: Mr. Salvioli

Contents

Consideration of reports submitted by States parties under article 40 of the Covenant (*continued*)

Third periodic report of Slovenia

This record is subject to correction.

Corrections should be submitted in one of the working languages. They should be set forth in a memorandum and also incorporated in a copy of the record. They should be sent *within one week of the date of the present document* to the English Translation Section, room E.6040, Palais des Nations, Geneva (trad_sec_eng@unog.ch).

Any corrections to the records of the public meetings of the Committee at this session will be consolidated in a single corrigendum, to be issued shortly after the end of the session.

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The meeting was called to order at 3.05 p.m.

Consideration of reports submitted by States parties under article 40 of the Covenant (*continued*)

Third periodic report of Slovenia (CCPR/C/SVN/3; CCPR/C/SVN/Q/3 and Add.1)

1. *At the invitation of the Chair, the delegation of Slovenia took places at the Committee table.*

2. **Ms. Brecelj** (Slovenia), introducing the third periodic report of Slovenia (CCPR/C/SVN/3), said that its late submission was attributable to her country's concurrent preparation of a number of treaty body reports and a new common core document. Several significant political, legislative and other changes had occurred since its submission. The 2014 parliamentary elections had substantially improved the representation of women in politics, with women currently holding 35.6 per cent of the seats in the National Assembly and 50 per cent of all ministerial posts. After years of economic and financial crisis, the first signs of economic recovery had been discerned in 2014, and in late 2015, the National Assembly had abolished austerity measures relating to social welfare benefits and discontinued some of those relating to child benefits and government scholarships.

3. In 2015 Slovenia had faced a massive influx of migrants, most of whom were in transit towards the north. Some 480,000 migrants had crossed the country since mid-October 2015. Slovenia was doing its best, in cooperation with other countries in the region, to find proper ways of dealing with the extraordinary situation. Volunteers, NGOs and international bodies were helping to provide migrants with the necessary assistance. Slovenia would strive, in collaboration with other countries located along the Western Balkan migration route, to comply with international standards applicable to migrants and to grant international protection to all persons entitled thereto.

4. In December 2014, Slovenia had ratified the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence (otherwise known as the Istanbul Convention), thereby taking an important step towards a more holistic and effective response to violence against women.

5. The amended Criminal Code, which had entered into effect in October 2015, provided enhanced protection for victims of criminal offences. The criminal offence of threatened discrimination, which had previously been subject only to private prosecution, was now prosecuted ex officio by a State prosecutor at the victim's request. A restraining order could be issued by the courts in connection with specific criminal offences involving violations of a person's physical or mental integrity. Another important amendment had made the confiscation or destruction of personal documents in the context of human trafficking a specific criminal offence. Forced marriage had also been recognized as a criminal offence. Following a recommendation by the Committee on the Rights of the Child, a study on early and forced marriages in the Roma community had been conducted in 2013 and had found that the incidence of such marriages in Slovenia was not negligible. Based on the study's findings and following ratification of the Istanbul Convention, a definition of that new criminal offence had been prepared. In 2016, the issue of forced marriages would be included as a training topic for Slovenian social service staff. The amended Criminal Code also defined the offence of stalking, which included harassment via electronic communications.

6. The new Code established criteria for the partial exclusion of liability for the criminal offence of disclosure of classified information in order to protect freedom of expression. One of the aims of the amendment was to protect journalists who reported on irregularities committed by the authorities.

7. The amended law on the prison system, which had also entered into effect in October 2015, established more effective legal avenues for convicted persons wishing to file a complaint about prison overcrowding. Based on the jurisprudence of the European Court of Human Rights and the conclusions of the Human Rights Ombudsman, prisoners claiming that they had been subjected to torture or other cruel, inhuman or degrading treatment were guaranteed more effective legal protection. The law also stipulated that prisoners who, due to old age, sickness or disability, required additional assistance had the right to be accommodated in adapted cells or sections.

8. The Employment and Work of Aliens Act of 2015 introduced new regulations and a standard expedited procedure for the issuance of a work and residence permit.

9. The Constitutional Court had annulled the provisions relating to the storage of traffic data by communications service providers. Based on that decision, the Criminal Procedure Act would now include a set list of serious criminal offences in respect of which the use of stored data would be admissible in a court of law. The Court had also found the existing provisions on searches of law offices and seizure of materials to be unconstitutional. The regulations would henceforth protect lawyer-client confidentiality.

10. In August 2015 the Government had endorsed the Fourth Report on the Situation of the Roma Community in Slovenia. The series of reports on the Roma community pointed to slow but steady progress in all areas covered by the 2010-2015 National Programme of Measures for Roma. Although the Roma community enjoyed full citizenship rights, as well as special rights deriving from laws based on article 65 of the Constitution, the Government was nevertheless aware of the need for much greater social inclusion of the Roma community and was therefore giving priority to the development of a new five-year national programme that would focus on combating intolerance against Roma, along with related instances of hate speech, prejudice and stereotypes, and on promoting dialogue and cooperation among State and local authorities, the Roma community and civil society organizations. Representatives of the Roma and local communities and interested members of the public were participating in the drafting of the new document.

11. In December 2015 the Governmental Group on the Fight against Trafficking in Human Beings had adopted guidelines on identification, assistance and protection for staff dealing with victims of trafficking. Slovenia provided training in that area for judges, prosecutors, criminal investigators, police officers, social workers and representatives of NGOs. Similar action was being taken regarding such issues as the sexual abuse of children, domestic violence, sexual exploitation and violence via the Internet.

12. The Resolution on the National Programme for Equal Opportunities for Women and Men (2015-2020) defined eight priority areas for efforts to improve the situation of women. In February 2016, the Government had adopted the Protection against Discrimination Act, which introduced systemic reforms and would strengthen the Office of the Advocate of the Principle of Equality, guarantee its independence and provide it with additional staff. A public debate on the amended Domestic Violence Prevention Act had also been held in February 2016. The amendments broadened the definitions of domestic violence and of family members and dealt with such other areas as the transfer of common residence, training and the roles of the courts and the police. Following the rejection in the 2012 referendum of an explicit prohibition of corporal punishment of children, such a prohibition would be included in a regulation that was to be adopted in 2016.

13. The Government had recently instructed the Ministry of Justice to draft amendments to the Human Rights Ombudsman Act that would meet the standards required for "A" status in accordance with the principles relating to the status of national institutions for the promotion and protection of human rights (Paris Principles). The Human Rights

Ombudsman had almost doubled the number of visits made to places of deprivation of liberty in 2015.

14. Under the Constitution of Slovenia, treaties that had been ratified and promulgated were directly applicable, and the provisions of the Covenant could therefore be invoked in the country's courts. Human rights training for judges and State prosecutors was organized on a regular basis. In 2015 the national Judicial Training Centre had joined the Council of Europe Human Rights Education for Legal Professionals Programme.

15. Key reforms had reduced court backlogs to a point where they could no longer be viewed as a systemic problem. The number of pending cases in 2014 had been the lowest since 1995.

16. Slovenian women were relatively well-represented in public affairs. A gender balance had been achieved among the incumbents in ministerial and deputy ministerial posts, and five out of nine constitutional judges were women. However, the number of women in managerial posts remained rather low. Efforts to address the issue were under way, and a legal foundation was being established for the application of quotas on management and supervisory boards.

17. The State had regrettably responded rather slowly to the mass violation of human rights that had followed its establishment as an independent republic, namely the erasure of persons' name from the Register of Permanent Residence in 1992. In 2010 the Speaker of the National Assembly and Minister of the Interior had offered a public apology, and a law had been enacted to establish the legal status of "the erased". Another law had been enacted in 2013 to introduce a scheme for providing compensation and other remedies for human rights violations. The payment of financial compensation had begun in 2014 and was currently in progress.

18. The training provided to the police force laid great emphasis on strict respect for legality, proportionality in the use of coercive measures and the protection of human rights. The Specialized State Prosecutor's Office and its division for the investigation and prosecution of criminal offences committed by officials, including the police, was independent of the Ministry of the Interior.

19. Applicants for international protection in Slovenia enjoyed basic procedural safeguards, including legal assistance. Special attention was devoted to vulnerable groups, particularly unaccompanied minors. Persons granted international protection could apply for family reunification and other forms of integration assistance. In 2015 Slovenia had updated its standard operating procedures for dealing with cases of sexual and gender-related violence involving asylum applicants. A new law on international protection provided a clearer definition of the safeguards to be put in place for applicants with special needs and set out procedures for ascertaining the best interests of child migrants.

20. Slovenia guaranteed freedom of religion for all. In response to an initiative by religious communities, the Government had established the Council for Dialogue on Freedom of Religion in 2015, whose members included representatives of the four principal communities, two elected representatives of smaller religious communities and the Human Rights Ombudsman.

21. An increase in hate speech directed, in particular, against Muslims had been discernible in recent months, primarily on the Internet. Prominent representatives of the State had publicly stressed the unacceptability of hate speech, had condemned hostile acts targeting the Muslim community, which were being investigated by the police, and called for tolerance and mutual respect.

22. On the sixtieth anniversary of the adoption of the Universal Declaration of Human Rights in 2008, Slovenia had published a collection of United Nations human rights treaties

translated into Slovene. The publication also included the country's reports pursuant to the treaties and translations of the treaty bodies' concluding observations. An electronic version was accessible on the Internet, and hard-copy versions were distributed to all Slovenian public libraries and to the Administrative Academy, which provided training courses and seminars for civil servants.

23. A number of ministries and government bodies had been involved in preparing the periodic report, and civil society organizations had been given the opportunity to present their views and proposals. It had also been reviewed by the Interministerial Commission on Human Rights, comprising representatives of all ministries, NGOs and academia. The report had then been published on the Internet, where a Slovene translation of the concluding observations would also be made available. Representatives of civil society organizations had been informed in December 2015 of the dates on which the report would be considered by the Committee.

24. As 2016 marked the fiftieth anniversary of the adoption of the two International Covenants, Slovenia, as a member of the Human Rights Council, had called for their universal ratification.

25. **Ms. Jelić** said that she would like to know more about specific instances in which the Covenant had been applied by the courts and about the training provided on its provisions to judges, lawyers and prosecutors, particularly in respect of the rights of asylum seekers, migrants and victims of human trafficking. It would also be interesting to learn more about the joint activities organized by the Government and civil society to raise the general public's awareness of their rights under the Covenant.

26. Noting the recent cuts made in the national budget, she asked what steps had been taken to ensure that the Office of the Human Rights Ombudsman was fully in compliance with the Paris Principles and had all the financial, human and material resources necessary to perform its functions effectively, particularly given that it had been designated as the national preventive mechanism under the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. In that connection, information on whether other national human rights institutions would be provided with the appropriate resources to function effectively and independently would also be welcome.

27. As to the rights of the Roma, she wished to know what steps had been taken under the 2015-2020 National Programme of Measures for Roma to combat intolerance, discrimination and hate speech, particularly against Roma women, and to strengthen the Roma Community Council. Had the State party considered taking affirmative action to support the Roma community?

28. **Mr. Rodríguez-Rescia** said that he would welcome additional disaggregated data on acts of discrimination that had occurred over recent years, including the number of cases investigated and prosecuted. Further information would also be appreciated concerning the measures taken to increase the resources available to the Advocate of the Principle of Equality, improve access to justice and provide redress for victims of discrimination, strengthen the provisions of the Protection against Discrimination Act, and introduce a comprehensive national approach for combating discrimination. In regard to the prevention of discrimination against refugees, he wished to know what measures had been adopted to ensure that persons seeking asylum had access to legal aid during the initial stages of the asylum application process pursuant to the International Protection Act.

29. As to the prohibition of torture and ill-treatment, he asked what concrete measures had been taken by the State party to combat all forms of torture and to collect reliable, comprehensive, disaggregated data on cases involving cruel, inhuman or degrading

treatment. It would also be interesting to learn more about the content of training courses for law enforcement officials on the use of force and prevention of torture.

30. **Mr. Ben Achour** said that he would appreciate a more detailed explanation of the statistics contained in paragraph 16 of the State party's replies to the list of issues (CCPR/C/SVN/Q/3/Add.1). Could the delegation also tell the Committee which articles of the Criminal Code the various entries related to? He would also be interested in receiving additional data on the number of acts of discrimination, hate speech or intolerance committed by State officials. While welcoming the State party's legislative efforts to promote equality and tolerance, he wished to know what concrete steps had been taken to combat the reported rise of xenophobia and Islamophobia in the country following the recent terrorist attacks and the migration crisis that had swept across Europe.

31. Regarding the representation of women in public affairs, he wished to congratulate the State party on the progress it had made towards strengthening women's participation in the judiciary, where in some cases women now outnumbered men. However, it would be interesting to learn more about the policies that had been adopted to increase the number of women in the National Council and the private sector, particularly in senior decision-making positions. What had been the main outcomes so far of the action plan adopted in 2015 with a view to increasing the representation of women?

32. **Ms. Seibert-Fohr** said that she was concerned at the State party's slow response to the situation of "the erased", that was, citizens of other republics of the former Socialist Federal Republic of Yugoslavia who had lost their status as permanent residents of Slovenia in 1992 and had thus become illegal aliens. She wanted to know whether it was true that many people had still not been able to have their status restored, as they had missed the July 2013 deadline for applying for permanent residence under the 2010 Act Amending the Act Regulating the Legal Status of Citizens of Former Yugoslavia Living in the Republic of Slovenia and that they now had no legal avenues for doing so. Given that the short deadline provided for in the original 1999 law had caused the current problems in the first place, why had it been deemed necessary to introduce another deadline in the amended 2010 Act? She wished to know to what extent persons who had not yet had their status as permanent residents restored were eligible for compensation under the 2013 Act on Compensation for Persons Erased from the Register of Permanent Residents. Was it true that compensation claims had been dismissed by the courts because they had been submitted after the relevant deadlines? The State party seemed to be suggesting that, by adopting the compensation scheme, it had fully met its obligations to remedy the violations, but in order to remedy a violation of the Covenant, Slovenia should provide for *restitutio in integrum* to the extent possible and ensure that no deadlines interfered with the restoration of the previous status, irrespective of any financial compensation that might later be paid.

33. Noting that the Committee on Economic, Social and Cultural Rights had expressed concern in 2014 about the prevalence of domestic violence in the State party and that there appeared to have been a 50 per cent increase in the number of cases of domestic violence between 2010 and 2015, she asked what the outcome of the 2009-2014 National Programme on Prevention of Family Violence had been. Had an evaluation of the effectiveness of that programme been carried out? Had the Government identified areas for further action and had a follow-up programme been launched? She would appreciate more information about the nature of the amendments to the Family Violence Prevention Act. Had they already been adopted? How were the measures taken to tackle violence against women coordinated, monitored and assessed, and how did the State party ensure that assistance was accessible to Roma and migrant women, women with disabilities and older women? Noting that some sources indicated that restraining orders were not well enforced, she invited the delegation to comment on the effectiveness of protection mechanisms for victims of domestic violence.

34. **Mr. de Frouville** said that he welcomed the commendable efforts made by the State party in recent years to address the problem of trafficking in persons, particularly in the areas of prevention and assistance for victims. He invited the delegation to comment on whether the Government might consider introducing a more formal system for identifying victims of trafficking and adopting a general law on trafficking in persons. He would be interested to know about the content of the guidelines on the identification, assistance and protection of victims of trafficking and how they were incorporated into the framework for combating trafficking in persons. He was also interested in learning what impact the current migrant crisis was having on the State party's efforts in that area and whether the procedure for identifying and providing assistance to victims of trafficking was still operating effectively. What was the State party doing to ensure that trafficking victims arriving at Slovenian borders had access to protection mechanisms? He would appreciate clarification as to whether the provision of accommodation to victims of trafficking was contingent upon their agreement to cooperate in criminal proceedings and whether Slovenian and foreign victims were treated differently in any way. He would be grateful for updated statistics on the number of prosecutions and convictions of human traffickers in the past three years. Was it true that the number of cases was on the decrease and, if so, why?

35. **Mr. Politi** said that he welcomed the entry into force of the amended Criminal Code, which exhibited a number of positive changes, especially with respect to the protection of victims of criminal offences. With regard to the criminal offence of threatened discrimination, he wished to know whether prosecutions must always be initiated at the victim's request or whether the prosecutor could bring a prosecution based on information from other sources. Noting the introduction of the new criminal offence of forced marriage, he requested statistics on the number of such marriages. He wondered whether the provision on the offence of stalking included a list of examples of the types of behaviour or acts that constituted stalking and whether there was the possibility of ex officio prosecutions, particularly if the victim was a minor or a person with disabilities.

The meeting was suspended at 4.45 p.m. and resumed at 5.05 p.m.

36. **Ms. Brecelj** (Slovenia), responding to Mr. Ben Achour, said that, having worked in the Supreme Court herself, she was aware that quotas for women in the judiciary were no longer required; in fact, it was now men who were in the minority.

37. **Mr. Pavlin** (Slovenia) said that the Covenant could be applied directly by the Slovenian courts and, in the event of a gap in national law or a contradiction between national legislation and the provisions of the Covenant or other international human rights treaties, the international treaties would prevail. With regard to training on the Covenant for judges, prosecutors and law enforcement personnel, Covenant rights were usually included as part of more general human rights content in courses on family law or women's rights, for example. As to the application of the Covenant in practice, in 2008 a provision concerning the right to counsel, in line with article 14 of the Covenant, had been removed from the Criminal Procedure Act on the grounds that that right would now be covered by the Free Legal Aid Act. However, in 2011, the situation had been reassessed and the relevant provision had been reinstated and strengthened. Its reinstatement had been accompanied by an explanation that its removal had been a mistake and had unintentionally left a gap in the law and that it was being restored due to the importance of the corresponding article of the Covenant. One of the significant measures taken to raise awareness of the Covenant and the other human rights treaties had been the publication in Slovenian of all of the State party's reports to the treaty bodies.

38. The debate regarding a national human rights institution and compliance with the Paris Principles had been ongoing for several years now, and an informal agreement had been reached with the Human Rights Ombudsman on the approach to be taken prior to drafting legislation on the matter. There were plans to introduce new autonomous units

within the Office of the Human Rights Ombudsman to focus on areas such as awareness-raising and assistance for victims of alleged human rights violations, but the Ombudsman would remain the lead agency for overall policy. The new units would undoubtedly require additional financial and human resources, but the exact amount involved would not be known until the Ombudsman's annual report was submitted to Parliament at the end of May 2016. However, the need for additional funding was not expected to pose a problem, as the Government was generally supportive of such efforts and had already provided additional resources at the request of the Ombudsman when the national preventive mechanism had been established under the Optional Protocol to the Convention against Torture in 2006. In any event, if the Government did not accede to the request, the Ombudsman was entitled to go directly to Parliament to apply for additional financial resources.

39. **Ms. Herman** (Slovenia) said that a new version of the National Programme of Measures for Roma was currently being developed, and a number of coordination meetings had already been held with representatives of the Roma community. The new programme would include anti-discrimination measures, activities designed to raise awareness among civil servants and judicial officials, and initiatives aimed at the empowerment of Roma women and girls and the elimination of stereotypes. Her Government recognized that progress had been slow with regard to protecting the rights of Roma, and it continued to give priority to that issue. In the light of the difficulties encountered since the entry into force of the Roma Community Act, amendments to that law would be drawn up in consultation with the Roma community. A special round table on hate speech had recently been organized in collaboration with The Peace Institute and Roma civil society organizations.

40. **Mr. Pavlin** (Slovenia) said that the incidence of hate speech tended to increase in the face of moral or political crises that incited strong public debate, such as the migrant crisis that had begun in 2012. The police force and State prosecution services had been prepared for such an increase in hate speech and were taking action to combat it. Parliament had recently held a special session devoted to the issue, as well as a public session attended by NGOs and academia, and had roundly condemned the recent expressions of hatred, violence and intolerance. Significant amendments had been made to the Criminal Code in 2011 which had broadened the scope of the provision criminalizing hate speech. Of the individuals who had been convicted of hate speech, only one was a public official. Regarding the statistics provided on cases of hate speech and violations of the right to equality, less than 10 per cent of those cases had involved violations of the right to equality, while the rest had all been cases dealing with hate speech.

41. **Ms. Lovšin** (Slovenia) said that an umbrella law that afforded protection against discrimination for all persons had been in place since 2004. Her Government recognized, however, that the Human Rights Ombudsman Act was inadequate and had therefore submitted a bill to Parliament to address its shortcomings. The bill had been prepared in consultation with the Ombudsman, civil society organizations and other stakeholders and had been posted on a government website for public comment. It was hoped that Parliament would discuss and adopt the bill at its April 2016 session.

42. If the bill passed, the Ombudsman would become fully autonomous and would be appointed by the President and confirmed by Parliament. The budget allocated to the Office of the Ombudsman would be proposed by the Government and approved by Parliament, and the number of staff members working in the Office would be increased to four. The Ombudsman's scope of authority would be broadened to include the functions of an inspection body, although he or she would not have the power to impose sanctions. The Ombudsman would, however, be allowed to participate in judicial proceedings. In addition to the funds allocated to pay the salaries of the four staff members, the Government would also provide funding for research and awareness-raising campaigns. The Ombudsman had

emphasized that cases of discrimination were underreported, as indicated by the decrease in the number of complaints received. It was hoped that the new bill would provide greater visibility to the work of the Ombudsman and to the issue of non-discrimination in general and would encourage victims of discrimination to file complaints.

43. **Ms. Koselj** (Slovenia) said that torture had been made a specific criminal offence in Slovenia only recently, which explained why the corresponding statistics covered only the period since 2010. Her Government firmly believed that those statistics, which indicated that there had been no instances in which torture had been committed in Slovenia, were correct. The overall situation was reflected in other indicators as well, such as the statistics which showed that the use of firearms by the police was extremely infrequent.

44. **Mr. Klančnik** (Slovenia) said that, since 2011, police officers and instructors and staff from the special prosecutors' offices had been required to attend regular training courses on the detection of torture or other violations of human dignity, as outlined in the Istanbul Protocol. Training sessions on detecting signs of torture had also been held for hospital staff. In addition to basic human rights training, police officers also received training on topics such as the role of law enforcement in a democratic society, policing in multi-ethnic communities, homophobia and child pornography. They also received language training in the Romani and Albanian languages.

45. **Ms. Lovšin** (Slovenia) said that the statistics on the representation of women in senior positions in large companies could be misleading because, given the small number of such companies in the country, the data could easily be skewed. Nevertheless, her Government was aware that much remained to be done in that regard, and it supported the directive on that subject proposed by the European Parliament and the Council of the European Union. A working group was going to prepare a bill on the subject which would hopefully be adopted by the end of 2016.

46. **Ms. Snoj** (Slovenia) said that the erasure of persons' names from the Register of Permanent Residents had not had any effect on those persons' status as citizens of any other republic that had been part of the former Socialist Federal Republic of Yugoslavia. The Act Amending the Act Regulating the Legal Status of Citizens of Former Yugoslavia Living in the Republic of Slovenia had been adopted to establish the legal status of those persons. Under that law, residency could be granted to persons who no longer lived in Slovenia and who had left the country because of their removal from the Register. The three-year deadline for submitting residency applications established in that law was much longer than the deadline originally established at the regional level and had been deemed sufficient by the Constitutional Court.

47. Printed brochures and the Internet had been used to disseminate information on the Act. The number of applications for residency submitted under its terms had been lower than expected, presumably because many persons who no longer lived in Slovenia had no intention of returning and therefore had no reason to take advantage of the opportunity provided by the Act. As at 1 March 2016, residency had been granted to about 11,000 applicants, and those who had not applied still had the possibility of obtaining residency under the terms of the Aliens Act. Pursuant to regulations adopted in 2013, persons whose names had been erased from the Register and who had subsequently been granted residency or who were citizens of Slovenia, as well as persons who had applied for but been denied residency, were entitled to compensation.

48. **Ms. Bošković** (Slovenia) said that the Resolution on the 2009-2014 National Programme on Prevention of Family Violence had focused on educating public officials and the general public and had resulted in increased reporting of incidents of family violence. The Government had not yet fulfilled the commitment it had made to set up a database on family violence and violence against women; that commitment would thus also

be included in the next resolution on the subject. Public consultations would be held on a bill on the prevention of family violence which had been developed by an interdepartmental working group with the participation of NGOs. The bill would broaden the definition of family members and of family violence and would also cover stalking as a newly defined form of violence. In addition, the obligation to report family violence would be extended to cover all cases involving vulnerable persons who were unable to report such incidents on their own. The bill would specify procedures to be followed by the courts and law enforcement officials. Protection measures, especially for children, would be expanded.

49. **Mr. Klančnik** (Slovenia) said that restraining orders were successful in 80 to 90 per cent of cases and that the bill in question would strengthen the provisions on such orders so that they would also apply internationally.

50. **Mr. Čurin** (Slovenia) said that systematic action plans and projects for the identification of victims of human trafficking had first been introduced in 2004. The contracts signed by organizations that ran projects to provide support to trafficking victims included provisions on cooperation between NGOs and law enforcement officials. An interdepartmental working group on human trafficking had formalized those procedures in 2015 by adopting a manual on the identification of and care for victims of human trafficking. Once approved by the Government, the manual would be distributed to all professionals who were likely to encounter trafficking victims and would serve as the basis for future training sessions for those persons.

51. The interdepartmental working group was currently reviewing the various pieces of legislation that dealt with human trafficking and was surveying umbrella legislation on human trafficking adopted by other countries. The results of that survey would serve as a basis for discussions on whether or not to adopt such an umbrella law in Slovenia. In the context of the refugee crisis, police officers who registered migrants at the border took steps to identify members of vulnerable groups, including trafficking victims, and referred those cases to specialists from the criminal investigation police.

The meeting rose at 6 p.m.

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Summary record of the 3247th meeting
Held at the Palais Wilson, Geneva, on Wednesday, 16 March 2016, at 10 a.m.

Chair: Mr. Salvioli

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Consideration of reports submitted by States parties under article 40 of the Covenant (*continued*)

Third periodic report of Slovenia (continued)

This record is subject to correction.

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The meeting was called to order at 10.05 a.m.

Consideration of reports submitted by States parties under article 40 of the Covenant (*continued*)

Third periodic report of Slovenia (continued) (CCPR/C/SVN/3; CCPR/C/SVN/Q/3 and Add.1)

1. *At the invitation of the Chair, the delegation of Slovenia took places at the Committee table.*

2. **Mr. Čurin** (Slovenia) said that, regardless of their race or nationality, victims of human trafficking were provided with comprehensive care, including emergency accommodation for 30 days, followed by the provision of secure accommodation for up to one year. All such services were provided by NGOs, with funding from the Government. Under the Aliens Act, victims of human trafficking who were not from the European Union could stay unconditionally for three months, with a possible three-month extension. After that, they could obtain a temporary permit for one year, which, again, was extendable. It was true that there had been a drop in the detection rate of human trafficking, but that rate had risen again in 2015. The police and the public prosecution service had dealt with 27 traffickers in 2012, 13 in 2013 and 9 in 2014, but as many as 42 in 2015. There had been eight convictions in 2012, two in 2013, none in 2014 and five in 2015. More investigations were being undertaken, and those inquiries were not necessarily completed within a calendar year, so the figures might underrepresent the actual detection and conviction rates.

3. **Ms. Snoj** (Slovenia) said that, with regard to the issue of the erasure of persons' names from the Register of Permanent Residents, the reason for the continuing irregular status of some of those 13,000 persons was their own lack of interest in changing their status, despite the Government's best efforts and the information that it had provided to people residing in other countries of the former Yugoslavia. The number of applications for permanent residence had been fewer than expected. As for the matter of compensation, in the case of *Kuric and Others v. Slovenia*, in which the European Court of Human Rights had handed down a decision in 2012, the plaintiffs had not wanted to remain in Slovenia and had not used the available remedies. The Court had ruled that the plaintiffs could not be relieved of their obligations to formally request a residence permit and could therefore not be granted compensation on that basis. However, persons whose names had been erased from the Register whose cases had been dismissed before the entry into force of the Act on Compensation for Persons Erased from the Register of Permanent Residents and had missed the deadline for applications could initiate proceedings again through a judicial or administrative procedure and thus obtain compensation.

4. **Ms. Brecelj** (Slovenia) said that the Media Act had been amended with a view to strengthening measures for combating hate speech on the Internet; the media were also expected to increase their use of their self-regulatory mechanisms. Discrimination counted as an aggravating circumstance in cases involving violent crimes. A new procedure had been introduced in 2015 for the prosecution of cases involving the offence of threatened discrimination under which it could be determined whether cases were to be brought on an ex officio basis or at the request of the victim. The procedure was supported by NGOs because it obviated the need for prosecution based on a private lawsuit.

5. Under the Electronic Communications Act, the stalking or grooming of children would be prosecuted ex officio. As for the question about the violation of the principle of equality, there had been two such legal cases, but usually victims lodged administrative complaints or sought compensation for loss of material or procedural rights. They could also submit an application to the Constitutional Court. With regard to the question about forced or early marriages, she could say that eight Roma children of Slovenian birth and

three Roma children who had moved to Slovenia had entered into such marriages. There had been 25 cases of early marriages between 2008 and 2013 in which no force had been used and no payment made for the bride. With respect to the question concerning the dissemination of information on the Covenant, it should be noted that the Government worked closely with civil society. It had not engaged in activities with NGOs dealing with the Covenant, but it had participated in joint awareness-raising campaigns focusing on the International Convention on the Elimination of All Forms of Racial Discrimination and the Convention on the Rights of the Child.

6. **Ms. Seibert-Fohr** said that, as the human rights violations committed when persons' names had been erased from the Register of Permanent Residents had been clearly established, the primary remaining issue had to do with the remedies provided and still available. More generally, she wished to know more about cases in which a remedy had been provided under the administrative procedure referred to earlier in the dialogue with the delegation.

7. The State party had acknowledged that there had been shortcomings in terms of the provision of free legal assistance for asylum seekers before the adoption of the amended Code of Criminal Procedure. There were still problems with the current law, however, since it did not spell out the conditions to be met in order for a defence counsel to be appointed at the State's expense. She would like to know more about the legal basis for deciding when the assignment of legal assistance was in the interests of justice, as required under 14 (3) (d) of the Covenant. According to the replies to the list of issues, the right to State-financed legal assistance was recognized only in cases where a person was suspected of a serious criminal offence punishable by a prison sentence of 5 years or more. That requirement seemed excessive. Moreover, a minor was provided with defence counsel only if charged with an offence punishable by more than 3 years. She could not see how it was not in the interests of justice to provide for the defence of a minor.

8. In paragraph 12 of the list of issues (CCPR/C/SVN/Q/3), the Committee had asked for statistics on persons deprived of their liberty, disaggregated by sex and age and by whether they were in pretrial detention or convicted prisoners. It had also asked about the official capacity of each place of deprivation of liberty. The table in paragraph 53 of the replies (CCPR/C/SVN/Q/3/Add.1) did not distinguish between adults and minors, nor did it specify the number of persons being held in each prison as against its official capacity. The failure to provide such information was all the more surprising in that statistics were available on the Internet. In 2015, 13 per cent of prisoners were in pretrial detention or on remand; 9.4 per cent were minors; and the prison population had grown by 25 per cent between 2002 and 2014. The occupancy level was as much as 50 per cent higher than the official capacity in some cases. The Committee had heard of overcrowding in a number of major prisons, including Dob, Ljubljana, Maribor, Koper and Novo Mesto. The European Court of Human Rights had described the conditions in Ljubljana Prison as degrading in 2011. At the preceding meeting, the delegation had said that the Enforcement of Penal Sanctions Act had been amended in 2015 to provide legal remedies for prisoners being held in overcrowded conditions. Equally important, however, was prevention. The report of the Human Rights Ombudsman indicated that there was a shortage of staff, and she wished to know what action the Government was taking in that regard.

9. **Mr. Rodríguez-Rescia** said that, according to information provided to the Committee, the State party had removed the right of free legal assistance for asylum seekers in the initial stage of the application process in 2012. He therefore wondered whether the State was considering reviewing the International Protection Act to ensure that asylum seekers had access to legal representation.

10. The delegation had said that a bill on discrimination was likely to be adopted soon, but the reasons why statistics on discrimination cases had been requested was so that the

Committee could gain a fuller understanding of the functions performed by the inspectors attached to various ministries and the work of the Advocate of the Principle of Equality. Was it correct that, under the forthcoming bill, penalties for perpetrators of discrimination would be lighter than before? He would also like to know whether the Executive Council would be dissolved. In his view, a platform for social dialogue should be introduced.

11. The Government was to be commended on its progress in reducing the backlog of cases before the courts, but he understood that a considerable backlog remained in the district courts, and he would welcome information on measures to deal with that situation.

12. The Committee had asked about the protection afforded to children from, in particular, abuse, exploitation, child labour, ill-treatment and early or forced marriage in the Roma community. The State party had provided some information on notable trends but not on the investigations carried out between 2010 and 2015 in cases where persons had failed to meet their family obligations under article 193 of the new Criminal Code and had failed to pay child support in accordance with articles 194 and 203 of the Code. He would also welcome further details on cases involving abuse of authority and violations of sexual integrity. The State party had provided information on the number of cases dealing with child labour but none on the number of complaints lodged with the relevant authorities or the number of investigations or on how many of those investigations had resulted in convictions and how many in acquittals. Lastly, he welcomed the prohibition of forced or early marriages, but the fact remained that the actual elimination of such marriages would require a major change in the cultural practices of the Roma, and he therefore wondered what steps the State party would take in that respect.

13. **Mr. de Frouville** said that he would appreciate clarification as to whether or not the State party had taken into consideration the recommendation by the Committee on the Elimination of Discrimination against Women concerning the introduction of a comprehensive law on trafficking. Perhaps it felt that the existing legislation was sufficient, but the recent influx of migrants made it more difficult to identify victims of trafficking, since so many were in transit. He wished to know whether the provision of housing following the 30-day period in which migrants were provided with emergency shelter was predicated on their cooperation in investigations and legal proceedings. If that was the case, he would like to know how the delegation viewed the situation.

14. Since the State party had submitted its replies in August 2015, the situation of non-nationals had changed radically: 375,000 migrants had arrived in 2015 and, since the beginning of 2016, a further 48,000, most of them in transit, had entered the country. Clearly, there was a need for a collective European solution, in the spirit of solidarity, but States also had individual responsibilities, and he would be interested to learn the delegation's views on the proposed agreement with Turkey. The Special Rapporteur on the human rights of migrants had expressed deep concern about the proposals on the table because they would give rise to mass expulsions without the benefit of proper individual assessments in direct contravention of international and European human rights law, which upheld the principle of non-refoulement.

15. It appeared that, in October 2015, Parliament had amended the Defence Act in order to give the armed forces greater powers so that they could play a role in border control, and he would welcome further details on that score. Had a needs assessment been conducted before the deployment of the army? The Human Rights Ombudsman had requested a review of the constitutionality of that legislation, and he would be interested to learn whether any action had been taken in that regard. The terms of reference for the deployment of the army appeared to be vague, particularly with regard to stop-and-search powers and border checks. The questions of oversight of army operations and the means of ensuring accountability were also problematic. He would like to know how complaints concerning abuses committed by the armed forces could be lodged. He would be interested

to hear the State party's response to the statement made by the Ombudsman regarding the fact that the construction of a barbed-wire fence along the country's border with Croatia was a violation of the right to freedom of movement. Did the Government plan to take the fence down and institute alternative measures that would be less conducive to potential human rights violations? Slovenia had allegedly prevented potential asylum seekers from entering its territory. What were the legal bases for preventing asylum seekers from lodging an asylum claim and how did the Government reconcile those measures with the principle of non-refoulement as set forth in the Aliens Act?

16. Since Slovenia had recently decided to close its borders in order to prevent migrants from crossing its territory unless they met certain specific conditions, he wondered how the Government justified that decision. Could the delegation provide information on the persons who had been denied entry at the border? He would like to know what criteria were used to determine whether potential asylum seekers would be allowed to enter Slovenia. In particular, he would be interested to know whether nationality figured among those criteria.

17. He wished to know whether it was true that unaccompanied minors who did not request asylum did not receive assistance from the State. According to the delegation, special attention was given to vulnerable groups, especially unaccompanied minors. Could the delegation explain exactly what special assistance was provided to such children? More information would be appreciated on the improvements that had been made in operational procedures for handling cases of sexual or gender-based violence involving persons applying for international protection. It would also be useful to know whether the right to family reunification was still enforced in the case of persons who had been granted international protection in Slovenia. Was it true that there were no procedures in Slovenia for identifying stateless persons?

18. With reference to paragraph 84 of the replies to the list of issues (CCPR/C/SVN/3/Q/Add.1), he would like to know whether the bill on families, which was to explicitly prohibit the corporal punishment of children, had been adopted into law and what provisions it contained. It would also be useful to know why the previous bill prohibiting corporal punishment had been rejected in a referendum in 2012 and how the Government planned to avoid similar problems in the future.

19. **Mr. Ben Achour** asked what measures had been taken to decriminalize defamation. He would welcome clarification from the delegation regarding the position of the Constitutional Court on that issue. Further details would be appreciated on the decisions handed down in cases involving defamation-related offences by the Constitutional Court in 1999 and 2015. Statistics for the previous five years on the application of the law under which defamation was an offence would be welcome. The issue that had arisen in the case of *Mosley v. the United Kingdom* that had been heard by the European Court of Human Rights was the potential conflict between the obligation to protect an individual's private life, on the one hand, and the prohibition of the placement of excessive restrictions on the freedom of expression and the freedom of the press, on the other. He disagreed with the Government's interpretation of the decision in that case inasmuch as, in his view, the Court had ruled in favour of freedom of the press. In its Resolution 1577 of 4 October 2007, the Council of Europe had taken a very clear position against the criminalization of defamation and had called for prison sentences for defamation to be abolished without delay. He invited the delegation to describe the State party's position in that regard.

20. With regard to question 16 of the list of issues (CCPR/C/SVN/3/Q), there seemed to be a contradiction between paragraph 181 of the State party's report (CCPR/C/SVN/3) and paragraph 77 of its replies to the list of issues (CCPR/C/SVN/3/Q/Add.1). According to the latter, the decision whether or not to grant citizenship to children born in Slovenia who might otherwise be stateless was in the hands of administrative authorities. He would

therefore appreciate clarification on the subject. Clearer responses to questions 19 and 20 of the list of issues would also be helpful.

21. **Ms. Jelic** asked what results had been achieved since the introduction of the Plan of Action for the Implementation of Regulations on Bilingualism in 2015. Data on "non-autochthonous" Roma, disaggregated by ethnic origin, would be useful in tackling minority issues, especially individual and group rights. She was concerned about the differences that reportedly existed in terms of the enjoyment of rights by the Serb, German and Croatian communities that had been in Slovenia for centuries.

22. She recalled that, in 2012, the Council of Europe had recommended that Slovenia should take further steps to provide elected Roma councillors with all necessary support, including appropriate training, and to ensure that the Roma Community Council properly represented the diverse groups making up the Roma community. Information would be appreciated on the implementation by the Municipality of Grosuplje of Constitutional Court Judgement No. U-I-345/02 of 2002, which directed that steps should be taken to secure a position for a Roma representative on the municipal council. She was also concerned about the situation of the Sinti community and would like to know what measures were being taken to ensure their representation and to help them preserve their identity and language. The large number of Roma children dropping out of school at an early age was another cause of concern. According to some sources, over 65 per cent of Roma and 70 per cent of Roma women had not completed elementary school.

23. **Mr. Shany** said that he would appreciate an update on the status of legislation on equality of rights for lesbian, gay, bisexual and transgender (LGBT) persons in Slovenia and, in particular, on same-sex marriages and civil partnerships. In 2009, the Constitutional Court had found that the Registration of Same-Sex Civil Partnerships Act and the Inheritance Act were discriminatory. Since several bills aimed at strengthening the status of civil partnerships had been submitted but had later been rejected in referendums, he wondered how the Government planned to address the discriminatory issues raised by the Court, as well as other issues related to adoption rights and access to reproductive health services. He invited the delegation to clarify the apparent contradiction between the 2009 Court decision on the unconstitutionality of the above-mentioned Acts and the fact that the Court had allowed the referendums to be held despite the fact that article 90 of the Constitution limited the ability to hold a referendum on laws designed to eliminate unconstitutionality in the field of human rights. What steps was the Government taking to raise the awareness of the general public regarding the importance of ensuring the full equality of rights for LGBT persons and their families?

24. **Ms. Cleveland** said that she would appreciate information on the amendments to the International Protection Act that had reportedly been approved by the Slovenian Parliament. The Committee had been informed that Parliament was also considering applying the concepts of "safe country of origin" and "safe third country", as well as introducing expedited inadmissibility procedures for application at the border, doing away with financial assistance for persons granted international protection and denying social assistance to persons granted subsidiary protection. She would welcome specific information on the changes being made and on how they affected the asylum procedures administered by Slovenia. Had the measures taken by the Government to speed up the processing of asylum seekers at the border included ensuring that border authorities had the legal expertise to deal with complex asylum cases? It would also be useful to know how many people were still in refugee camps and what their living conditions were like. Lastly, she would appreciate details on what had been done to ensure that adequate shelter, food, water and transport would be available to persons who had entered the country.

The meeting was suspended at 11.25 a.m. and resumed at 11.39 a.m.

25. **Ms. Snoj** (Slovenia) said that, under the Aliens Act, citizenship and residence permits were administrative issues. Compensation for persons whose names had been erased from the Register of Permanent Residents could be granted through administrative or judicial procedures. It was for the persons concerned to decide which procedure to initiate. Under an administrative procedure, compensation consisted of a lump sum of 50 euros for each month during which their names had been erased, without any requirement to establish a causal link between the "erasure" and the damage suffered. Persons who felt that the damage done to them had been greater than that recognized under the administrative procedure could have recourse to a judicial procedure. By 1 March 2016, 7,273 applications for compensation had been lodged with the administrative authorities, of which 7,086 had been dealt with. By 1 March 2016, a total of 21,929,000 euros had been awarded in compensation.

26. **Mr. Koselj** (Slovenia) said that, in certain cases, the police waived the requirement under which suspects had to have been charged with an offence punishable by imprisonment of at least 5 years in order to have legal assistance assigned to them. All persons deprived of their liberty had the right to counsel, and their statements could be used against them in a court of law only if that right had been respected. In cases involving minors, the police had a duty to assign an ex officio counsel whenever the best interests of the child so required.

27. **Mr. Pavlin** (Slovenia) said that, when figures had been collected in 2014, six minors had been in police custody and a further five had been serving prison terms.

28. **Ms. Brecelj** (Slovenia) said that the problem of prison overcrowding was most serious at Ljubljana Prison. The Ministry of Justice had identified a location for a proposed new detention facility in the capital and had earmarked the funds needed for its construction.

29. **Mr. Pavlin** (Slovenia) said that the Enforcement of Penal Sanctions Act had been amended to enhance the accessibility of legal remedies for violations of prisoners' rights. The only claim for damages filed since the adoption of the amendment had been successful.

30. **Ms. Lovšin** (Slovenia) said that Parliament was discussing a bill that specified which inspection bodies and services had the authority to impose fines as penalties for discrimination. The fines proposed in the bill were slightly lower than those provided for in existing anti-discrimination legislation because of the need to harmonize the bill's provisions with those of laws governing specific matters, in accordance with the principle of *lex specialis*. The Council for Equal Treatment had been inactive since 2012 as a result of a change in the government ministry to which the Office for Equal Opportunities was attached. The Government was of the view that the recent creation of anti-discrimination councils to represent persons with disabilities, the Roma community and women, among others, had obviated the need for a general platform to discuss non-discrimination. It would, however, establish such a platform if the need arose.

31. **Mr. Klančnik** (Slovenia) said that, in 2015, there had been 424 recorded offences against children, including 93 sexual assaults, as opposed to 644 offences and 239 assaults in 2011.

32. **Mr. Koselj** (Slovenia) said that, when comparing the overall number of complaints submitted to the police with the number of cases adjudicated, one had to take into account the time it took for trials to be conducted and the fact that, in some cases, charges were requalified or dismissed altogether. The offences of sexual assault against a person aged under 15 years, which was dealt with in article 173 of the Criminal Code, and violation of sexual integrity through abuse of power, which was covered by article 174, were comparable, with the only major difference being the age of the victims. The lack of data concerning investigations into offences under articles 193 and 194 of the Code was

accounted for by the fact that summary procedures were used, which meant that investigations were not conducted as a matter of course.

33. **Mr. Čurin** (Slovenia) said that proposals for an umbrella law on human trafficking were being discussed by a group of experts, some of whom had argued that the offence was already fully covered by existing laws. The European migrant crisis had placed a heavy burden on the police and had hindered the identification of trafficking victims. Nevertheless, the police had the situation in hand and were adequately trained and equipped to perform their duties. The status of trafficking victims who were in Slovenia illegally was governed by the Aliens Act. Victims were entitled to remain in the country for an initial period of three months, with the possibility of a three-month extension. The issuance of an extendable one-year residence permit was contingent on cooperation with the police during criminal proceedings.

34. **Mr. Skerbiš** (Slovenia) said that, since 2015, Slovenia had been faced with an extraordinary influx of refugees, asylum seekers and economic migrants. Countries along the Western Balkans migration route, among whom communication had initially been poor, were cooperating to manage the crisis and to find a lasting solution. Since the summit between European Union leaders and Turkey in early March 2016, the rate at which migrants were entering Slovenia had slowed. The Government was well aware of the difficult situation in Greece and in the former Yugoslav Republic of Macedonia and had adopted a refugee resettlement plan. The joint refugee registration agreement concluded among police chiefs from five European countries, including Slovenia, had been reached at a time when large groups of migrants were travelling along the Western Balkans route and when certain restrictions on the entry of migrants had already been introduced by countries in northern Europe. Since early March 2016, Slovenia no longer adhered to the agreement and had notified the other parties accordingly.

35. The purpose of the temporary technical barriers that had been placed along the border with Croatia was to channel migrants towards official entry points in the interests of their safety. The measure, which had been described as necessary and proportionate by Prime Minister Miro Cerar, would be lifted as soon as circumstances allowed. The Human Rights Ombudsman had concluded that the barriers did not violate human rights. In response to the influx of migrants, members of the armed forces had been mobilized to provide logistical support to the police pursuant to article 37 of the Defence Act. The decision to deploy the armed forces had been made on the basis of a needs assessment conducted by the Government. Army personnel could use their weapons only in self-defence and carried out patrols in tandem with, and under the supervision of, the police.

36. **Mr. Pavlin** (Slovenia) said that the Human Rights Ombudsman had challenged the constitutionality of article 37 of the Defence Act on the grounds that the powers and obligations of army personnel and police officers were insufficiently defined. It was important to stress, in that regard, that the armed forces could provide support for an initial period of three months, which could then be extended by Parliament only by a two-thirds majority, and that strict provisions were in force for the punishment of any armed forces personnel who committed offences.

37. **Ms. Hrovatin** (Slovenia) said that the procedure for granting international protection, which remained open to stateless persons, gave priority to the identification of vulnerable groups, and standard operating procedures were followed in cases of sexual and gender-based violence. In accordance with a revised agreement signed in February 2015, detailed procedures had been defined for different categories of applicants. All applicants were entitled to be informed of their rights and obligations and of the possible consequences of failing to cooperate with the authorities. They were offered legal and other assistance in dealings with the Administrative Court and the Supreme Court. Provisions related to family reunification had been transferred from the International Protection Act to

the Aliens Act, which provided for free interpretation and translation services during the family reunification process.

38. **Ms. Boškić** (Slovenia) said that, in order to reduce the likelihood of encountering opposition, the Government intended to incorporate provisions prohibiting corporal punishment into the Family Violence Prevention Act. The necessary amendments were expected to be adopted by the end of 2016. She was not in a position to comment on the 2009 ruling of the Constitutional Court regarding the Registration of Same-Sex Civil Partnerships Act and the Inheritance Act. The Government had decided, however, that any future bill aimed at strengthening the status of civil partnerships would not be put to a referendum. Same-sex couples had been granted equal rights under several national laws, and a comprehensive bill on LGBT rights was in the pipeline. Moreover, the Government, in cooperation with the University of Ljubljana and with civil society, was set to launch a two-year campaign to raise awareness of LGBT rights and to combat persistent stereotypes about the LGBT community.

39. **Mr. Pavlin** (Slovenia) said that, in 1999 and 2015, the Constitutional Court had ruled in favour of the defendants in two separate defamation cases. There had been no criminal convictions for defamation in 2013 and only four in 2014, none of which had led to imprisonment. The Human Rights Ombudsman no longer considered the backlog of cases before the courts to be a systemic issue. Residents of Slovenia made frequent use of the legal remedies available to them, and the European Commission had praised the Government for its efforts to enhance access to justice.

40. **Ms. Hrovatin** (Slovenia) said that Slovenian citizenship was automatically granted to unaccompanied minors whose parents could not be identified and to children born in Slovenia whose parents were stateless or of unknown nationality.

41. **Ms. Kalčič** (Slovenia) said that, in response to a call by a parliamentary commission for a more consistent implementation of regulations on bilingualism, in 2014 the Government had established a working group composed of representatives of various ministries and the Italian and Hungarian minorities to draft an action plan in that regard. The plan had been adopted by the Government in July 2015. The working group had subsequently been mandated to report annually on progress made in implementing the plan; its initial report was due to be issued in July 2016.

42. **Ms. Trančar** (Slovenia) said that, under articles 61 and 62 of the Constitution, members of ethnic communities from other republics of the former Socialist Federal Republic of Yugoslavia had the right to freely express affiliation with their national community and use their language and script. In 2013, the Government had set up an advisory body to represent those communities with a view to preserving and promoting their identity. To that end, the Ministry of Culture had developed various programmes, some with the support of the European Social Fund, aimed at, among other things, meeting such communities' cultural needs and facilitating their integration. Funding had also been provided for cultural programmes for the German-speaking community.

43. **Ms. Herman** (Slovenia) said that there were no plans to amend legislation dealing with political participation of the Roma community at the local level. The Constitutional Court, which had considered the matter on various occasions, had consistently ruled that the system in place was in line with constitutional requirements. Following a 2009 amendment aimed at improving the enforcement of local government legislation, all municipalities that were required to guarantee political representation of the Roma community were complying with their obligations in that regard, including the Municipality of Grosuplje.

44. The composition of the Roma Community Council had been determined on the basis of a proposal made by the Roma Union of Slovenia, which at the time of the Council's establishment had been the only existing representative organization for the Roma

community. However, the Government was planning to alter the Council's composition later in the year in order to better reflect the current reality. Training programmes had been put in place to enable members of the Council to participate more effectively in decision-making processes. All members of the Roma community, regardless of their status (autochthonous or otherwise), were invited to take part in discussions regarding regulations affecting them. The Constitutional Court had ruled that the definition of the Roma community set out in article 1 of the Roma Act encompassed the Sinti community. Accordingly, the fact that members of that community were not expressly represented on the Roma Community Council was no obstacle to their participation in all programmes and schemes intended for the Roma community.

45. **Mr. Ojsteršek** (Slovenia) said that, since 2004, steps had been taken to ensure that Roma children were fully integrated into the education system. Measures to that end included the training of 22 Roma classroom assistants, whose role was to help children overcome any emotional or linguistic barriers that they might face. From a gender perspective, it was important to note that more girls than boys made use of the so-called "Roma education incubators", which provided extracurricular activities for older children. Kindergarten attendance, which was not obligatory, was free of charge for Roma children whose families could not afford it. Over 1,860 Roma had successfully concluded adult education programmes that had enabled them to complete their studies.

46. **Ms. Hrovatin** (Slovenia) said that, under proposed legislation, applicants for international protection would still be entitled to proper judicial protection and able to appeal decisions to the administrative courts, the Supreme Court and the Constitutional Court. The new law would include detailed provisions on the concept of "safe third country" and specify the limited circumstances under which accelerated procedures could be used to process applicants. Extensive training would also be provided for border officials and others to ensure that procedural safeguards were enforced systematically. In view of the increasing number of applicants arriving in the country, a contingency plan had been adopted in July 2015 to ensure the availability of sufficient and appropriate accommodation. Social assistance payments were still available to persons moving from asylum centres to private housing and was furnished on the same terms as it was to Slovenian citizens.

47. **Ms. Herman** (Slovenia) said that, since 2015, training had been provided for social workers on issues relating to early and forced marriages. The Government was also planning to make funding available to raise awareness among Roma of the consequences of those practices.

48. **Ms. Cleveland** asked whether the delegation could provide the Committee with a copy of the recently adopted final amendments to the International Protection Act.

49. **Mr. de Frouville** said that he would appreciate it if the delegation would clarify who had made the joint declaration on the management of migration flows that the State party was apparently no longer applying. He would welcome a reply to the earlier question about the position of the State party vis-à-vis the European Union draft agreement with Turkey. He would also like to know whether legal assistance was still available for asylum seekers, whether family reunification was still possible for persons who had been granted international protection status and whether assistance was provided to unaccompanied minors who were not seeking asylum.

50. **Ms. Brecelj** (Slovenia) said that the delegation could provide the Committee with only the original-language version of the amendments to the International Protection Act, since no English translation was yet available.

51. **Mr. Skerbiš** (Slovenia) said that the joint statement referred to had been made by five police chiefs at the beginning of March 2016. The delegation did not have the

necessary information or instructions to reply to the question concerning the draft agreement with Turkey.

52. **Ms. Hrovatin** (Slovenia) said that legal assistance was provided to applicants for international protection and that family reunification was possible for those persons.

53. **Mr. Pavlin** (Slovenia) said that the proposed amendments to the International Protection Act took full account of comments made by the Ombudsman and NGOs.

54. **Mr. Skerbiš** (Slovenia) said that free legal assistance was provided to aliens who were not seeking international protection by an NGO that was contracted to do so by the police.

55. **Ms. Brecelj** (Slovenia) said that she wished to thank the Committee for a very fruitful dialogue. While progress had been made in many areas, additional efforts were still required to address a number of important issues. Her Government was committed to further strengthening the role of the Office of the Human Rights Ombudsman and ensuring its compliance with the requirements for "A" status accreditation under the principles relating to the status of national institutions for the promotion and protection of human rights (Paris Principles). It would also be introducing legislative initiatives to address domestic violence in a comprehensive manner, including through enhanced protection and assistance for victims and rehabilitation programmes for offenders. The Government would continue to take steps to integrate the Roma community more fully and to empower its members. It was well aware that it needed to strengthen its efforts to implement the principle of integration in primary education. It was committed to regulating the status of the so-called "erased" and remedying the injustices that they had suffered through compensation and other measures of satisfaction. Slovenia had been working actively with national, regional and international stakeholders to resolve the migration crisis. As part of its efforts to that end, it had adopted a number of carefully considered measures to support the action of the police in protecting the border. The steps that it had taken were not intended to close the border to applicants for international protection; Slovenia continued to meet its obligations under the 1951 Convention relating to the Status of Refugees.

56. **The Chair** said that, in the head of delegation's concluding remarks, she had identified a number of issues that were of concern to the Committee. In particular, he looked forward to progress being made in strengthening the national human rights institution, which had a key role to play in the protection of human rights in Slovenia. While the Committee had taken note of the legislative initiatives taken to combat gender violence, its primary concern was that legislation should be effectively implemented in practice. Similarly, it was to be hoped that effective action would be taken to put an end to the corporal punishment of children and the practice of early and forced marriages. As to issues relating to defamation and freedom of opinion and expression, he wished to draw the delegation's attention to the Committee's general comment No. 34, in particular paragraph 47 thereof. Lastly, it must be remembered that all measures taken to deal with the migration crisis should be consistent with obligations under the Covenant.

The meeting rose at 1.05 p.m.